CASE AND COMMENT

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Scientific Administration of Criminal Law

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THE citizen of the twentieth century faces many grave and difficult problems, but none of them more grave or more difficult than the problem of the proper administration of the criminal law.

With the rapid growth of modern cities and the ever-increasing congestion of population in small areas, there have developed criminal classes in our midst; people whose vocation is to commit crime, whose hands are upraised against their fellowmen from the cradle to the grave, and who know and expect no other or better life than the life of the jail, the prison, and the reeking alley.

That these criminal classes are increasing in size, that they already form an *imperium in imperio,* many of whose subjects are either mental defectives or moral and physical degenerates, are facts which we cannot deny without falsehood, nor overlook without cowardice.

It is also claimed by many who cannot be considered as mere alarmists, that respect for law is waning among the mass of the people at large, that acts of violence against person and property are on the increase, and breaches of trust more frequent.

These are not pleasant things to say or to hear. If they be true they should give pause to every thoughtful citizen; if there be remedies they should be found and applied without delay. Is the administration of the criminal law in any measure responsible for the situation, and if so in what respects?

This latter question is the one which should particularly appeal both to those who make and to those who administer the criminal law, especially in view of the fact that it has been recently said by one in very high station that the administration of the criminal law in America is a disgrace to the nation. A very large proportion of those who make the laws are lawyers, and all of those who administer the laws in the courts are lawyers, and thus the question appeals primarily and perhaps most forcibly to lawyers. The invincible bourbons among the profession will avoid or belittle the question with the fatuous obstinacy of the bourbon of all ages, and all countries, but the lawyer whose face is toward the light (and I believe there are many such) will see its tremendous importance, and will make every effort to meet it like a patriot and a man. It is certain that no criminal code has yet been perfect,—no method of punishment ideal. We have progressed much since the days when the criminal was treated as a wild beast and punishments took the form of public vengeance, but have we yet reached anything like philosophic treat-

ment of individual cases or of the general subject? It seems to me that no honest intellect can answer the question with an unqualified affirmative.

Delay or Miscarriage of Justice.

I shall not here discuss the much-debated subject of the delays in criminal trials and the miscarriages of justice by reason of the extreme technical rulings of some of the courts, the incompetence of prosecuting officers, or the too great zealousness of courts to enforce constitutional or statutory provisions which may be so magnified as to hamper, rather than promote, the attainment of justice. All of these questions are important, and some of them are burning questions; but they are receiving earnest attention in substantially all jurisdictions, with gratifying results, and they are not within the scope of the present brief essay. I wish to say a few words upon the question of the treatment of the criminal, both before and after conviction. Do we treat him philosophically, do we treat him fairly, nay, do we treat him in the way which is calculated to produce the best results to society?

Individualization of Punishment.

It is incontestable that in most of our states the laws regulating punishment for crime, by imprisonment in jails or prisons, follow substantially the same lines as the Codes of a hundred years ago; terms of imprisonment have been changed perhaps, and courts have been given greater latitude as to the length of the sentence; in some states reformatories have been provided for first offenders and indeterminate sentences authorized; all these things are commendable, but they do not reach the real fundamental difficulty, and that difficulty is that our laws provide substantially the same punishment for every criminal who has performed the same forbidden act, whether he be young or old, a first offender or a hardened criminal, and they neither contemplate nor provide any efficient method by which the trial judge can learn the history of the offender, his heredity, or his environment, or the hidden causes which led up to the offense, and which would illumine its true character. This cast-iron, unbending method of treating crime was excusable, perhaps unavoidable, a century ago, but not now. Since that time man has come to study his fellowman, and has learned that responsibility for a given act is not accurately to be determined by considering that act alone. We continue, however, to measure the quality of the act by the same rule as before, when we know full well that we can make no just estimate unless we know something of the history of the person, his birth, his surroundings, his education, and his heredity.

If, as we loudly proclaim, the great object of punishment is not vengeance, but reform of the criminal, our present mode of treatment of the convicted man is very much as if a physician should prescribe an unvarying dose of an unvarying medicine for the cure of every patient whose temperature reaches 102 degrees, regardless of the history of the case and of all other symptoms, and pay no more attention to the case. The physician who should in this day and age attempt to treat bodily disease by such methods would not be tolerated for a moment, but the laws which provide for the treatment of moral disease by the same methods excite no serious comments among the mass of the people, nor even among many whose duty it is to administer it.

The writer of this article was upon the trial bench for seven years, and had occasion to pass sentence upon a considerable number of convicted persons, and he frequently felt the utter impossibility of satisfying himself as to the wisdom or justice of the sentences which he imposed. It seemed always to be merely a guess, and a very unsatisfactory guess at best. He always recognized the difficulty of the task, but he did not then comprehend, as he now comprehends, the true reasons for that difficulty; namely, the fact that he could make no study of the convicted person's previous life or environment, or the causes of his act, nor avail himself of the study of any expert on the subject; and the further fact that, even if he could accomplish these things, he could take little or no advantage of them, but must still impose a predetermined prison sentence, regardless of its fitness to the crime or its prob-

able deterrent or reforming effect on the criminal. While these considerations apply in some degree to all criminal prosecutions, they apply with the greatest force to those cases in which the offenders are either (1) very young, or (2) in some degree peculiar, or not wholly normal by reason of heredity, or environment, or other cause, or (3) first offenders who, though not children, are still at the age where, under favorable conditions, reform may be reasonably hoped for, or (4) confirmed and repeated criminals, as to whom there can be no hope of reform.

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As to each and all of these classes of offenders, the prevailing practically immutable methods of punishment seem to me quite indefensible. It is perhaps needless to enter into any argument of this proposition as to the first class named. Already the rank folly of treating the child offender as a criminal, and sending him or her to the bridewell in the company of the harlot and the thief, only to receive an advanced course of instruction in crime, has been quite generally realized, and juvenile courts administered by wise and kind judges, with power to temper justice with love and mercy, have been established in our great cities, and their number is increasing. Thank God for this advance!

Peculiar or Abnormal Offenders.

As to the other three classes, however, the difficulties are still acute in most of the states. Consider for a moment the second class enumerated above. We all know how many persons there are who, though apparently entirely normal under ordinary circumstances, are yet either by heredity or unfortunate environment peculiarly susceptible to a sudden impulse or suggestion, but without criminal intent. Such a person is brought into court, charged with an offense; the commission of the criminal act is fully proven; the person himself seems to be and is, so far as the ordinary acceptation of the term is concerned, entirely normal, the trial judge has no opportunity to make inquiry as to the previous life or history of the prisoner, and it would be of little or no avail if he had the opportunity; yet in many such cases careful and sympathetic study and investigation of the history of the offender by an expert physician or psychologist would disclose perfectly satisfactory causes for the criminal act, either in the way of heredity, environment, physical injury, irritation resulting from the hardships or injustice of daily life, which would put a vastly different face on the criminal act, and make it, instead of a deliberate crime, rather the unfortunate outcome of untoward circumstance, operating perhaps upon an originally backward mind and brain.

Now, here is a situation fraught with grave consequences. The offender must,

under the prevailing system, be sent to jail or prison, and serve his sentence. The result is generally that he comes out embittered by punishment, ready to make war on society, and add another to the army of the confirmed and hopeless criminals. Were it possible for the court to delay sentence, to cause the investigation which I have suggested to be made, to ascertain where the real difficulty has been, and then to treat the case as an individual problem, prescribing such measures, either therapeutic, disciplinary, or segregative, as its history indicates to be best, society might easily acquire a sober, industrious citizen, instead of an enemy.

First Offenders.

The same considerations apply with somewhat less force to all first offenders; there are many of them who have yielded to some sudden and overwhelming temptation, but who are not criminals at heart or by choice; if they had half a chance to try again they might easily become fairly respectable citizens. Here, too, an intimate knowledge of the previous history, temperament, and surroundings of the offender, gained by the investigation of an expert, together with power to treat the case, so far as punishment is concerned, in such a manner as the apparent lack of deliberate criminal intent and the possibility of reform demand, would make it entirely possible for a discriminating and humane judge to save a life from shipwreck, and society from an additional menace. Under the present system, however, there is no choice,—the prison sentence must be imposed, and at its close the offender is quite apt to come forth a pariah and an Ishmael, whose hand is henceforth against every man.

Confirmed Criminals.

As to the confirmed criminal, the man who spends his life serving prison or jail sentences, with brief intervals in which he is propagating his kind and executing new crimes, the question is somewhat different, but the need of knowledge of the man's history is just as important, not that he may be treated with clemency, or in the hope of reform, but that measures may be taken so that the criminal who has made crime his profession may be permanently placed where he can neither continue the race of criminals, nor instruct others in his business.

It is said that nine tenths of the serious crimes in England are committed by men who have already served one or more terms of imprisonment, and who may be called permanent and confirmed criminals. Probably the same percentage would not hold good in this country, but doubtless it would be very large.

When it is ascertained that a man's sole purpose in life is to commit crime, is it not monumental folly to imprison him for a short term, and voluntarily send him forth again, time after time, to continue his warfare on society? Is not this one great reason for the formation and growth of the criminal classes? Is not society justified in protecting itself against this tremendous menace by providing for the permanent segregation or imprisonment of the incorrigible criminal? These are questions which deserve the most careful and serious thought.

The American Institute.

The American Institute of Criminal Law and Criminology, a national organization composed of lawyers, judges, sociologists, penologists, and students of economic, social, and political problems of all kinds, has been formed none too soon to discuss and promote measures for solving the problems I have suggested and many others connected with the administration of the criminal law.

It should receive the support of the bench and bar everywhere. It makes for progress of the race, for better manhood and womanhood, for the coming of the brighter day.

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"Humanizing Criminal Law"

BY ARTHUR MAC DONALD

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Author of "Juvenile Crime and Reformation."[1]

IN order to understand some of the differences between the criminal law of the past and present in relation to humanitarian feeling, a few facts in the history of crime in England will be given, which will illustrate how her criminal law has become more humane. What is true of England is doubtless true of most countries.

In Queen Elizabeth's time, there was a great decrease in capital punishment. It is asserted that in the reign of Henry VIII., nearly two thousand minor criminals were hanged annually; that in Elizabeth's time the number had fallen to about four hundred While these figures are conjectural, it is probable that there were fewer executions and less crime at the end of the sixteenth century than at any previous time in English history.

When human blood was cheap, when it had a fixed price in cattle and money, it was not strange that a murderer could buy back his life, but a thief, too poor to make restitution, was hung. It was no greater crime to kill a person, than to pick his pocket. It was only in 1808 that a law was passed by which pocket-picking ceased to be punished by death. It was as late as 1820 when the law was changed to the extent that it was no longer a capital offense to steal from a shop, unless to the value of £15. Until 1832, stealing of horses, cattle, and sheep, stealing from dwelling houses, and forgery were capital offenses.

Public Punishments.

It was a common sight to see a baker with a loaf of bread about his neck for dishonest dealing, being jeered and pelted in the pillory, which was also used to punish those who sold bad meat, poultry, fish, and false jewelry; also those who were gamblers, with loaded dice; beggars, who had pretended to collect for a hospital, fortune tellers who had promised to recover stolen goods, and petty thieves of every kind. Sometimes there would be seen a woman on the ducking stool, to which she had been sentenced as a common scold. A hasty word was often punished by a dagger; a claim, whether right or wrong, was often enforced by a troop of armed men. The gibbet, with a robber hanging in chains, was a familiar object; and the heads of

[1] "Juvenile Crime and Reformation" (359 pp.) and its companion "Man and Abnormal Man" (780 pp.) are Senate documents, and may be obtained either through any United States Senator or Representative. Also the "superintendent of documents" at the Government Printing Office, Washington, D. C., will send them on receipt of their prices (25 and 40 cents).

The Ducking Stool in Leominster Church, Shropshire

traitors and heretics were exhibited on poles.

Torture.

In the past ages the people seemed to gloat over cruelties. The effects were brutalizing. The torture room was a recognized institution, and excited little or no public discontent. Not only were there most brutal punishments, as boiling alive, cutting off hands and arms, and the rack, when the public looked on with complacency, but even the judges took pleasure in the misfortunes of the accused, pronouncing sentence with bloodthirsty exultation. The theory of torture was that a person accused should, if possible, incriminate both himself and others; and the judges, who could not legally order the torture, could question and threaten anyone arraigned. This prevalence of brutality, for long ages, confirms the teaching of history, that human beings are mainly what their forefathers were, and that the difference between two consecutive generations is often very difficult to perceive.

Modern Methods of Reforming Criminals.

The "humanizing of the criminal law" is not only shown in the history of crime, but is especially exemplified by modern methods of reforming criminals.

It is often asked, What is the "cure" for crime?—implying the idea of some specific remedy. But it is doubtful if any such remedy would be possible. It would be like seeking a specific for general good health. The criminal element in man's nature radiates through the whole man, so that the remedy may be a question of general moral health, for which no specific is adequate. One main remedy is education, consisting almost wholly in the early training of the young. Anything that tends to make them good citizens helps to prevent crime.

Need of Moral Education.[1]

A general defect in education seems

[1]See address on "Moral Education" (by author) before the "Mary Washington Chapter" of the Daughters of the American Revolution, published (in French) in "La Revue Internationale de l'Enseignement, 15 Aôut, 1908. Paris.

to be giving too much weight to the intellectual and rationalistic side of nature, and too little to moral impulses. This boy stole because he was ignorant; no, he stole because of his bad social or parental surroundings, which are also the cause of his ignorance, he not having means to obtain an education. Goethe says to liberalize the mind, without giving one control of his character, is bad.

One of the main objects of education is to eradicate, or at least modify or correct, unfavorable tendencies in mind, will, and body, and to develop favorable ones. That is, one great purpose of all education should be moral; for an individual may be a good citizen with little knowledge, if he has sound morality, but the reverse may not be true. For little morality with much knowledge can be a dangerous combination, especially when the child becomes an adult. Any education or teaching which develops the mind, without equally developing the moral impulses, may become a dangerous education; for when the recipient goes wrong, he is a more astute enemy of society and can do more evil than a thousand citizens can do good. If, as some claim, we must emancipate the mind and liberalize the spirit, we must be all the more solicitous as to moral education; for the old religious ideals are almost inseparably connected with moral ideals, and an effort to separate them may be a reform in the wrong direction. Antireligious intolerance is not only worse, but more injurious, than religious intolerance.

While moral or reformatory education is the most important, it is, strange to say, the most neglected. One of its purposes is to lessen or prevent crime, pauperism, and degeneracy by the teaching of mental, moral, and physical habits, especially to the young, that they may be better protected and prevented from going wrong.

There is a special difficulty in teaching even a minimum system of morality. For the *desideratum* consists not only in inculcating general principles, but by indicating courses of conduct in detail. Generalities elevate the moral tone, but details incarnate the principles.

Some Children Difficult to Reform.

In vicious and criminal children the cause of their degeneracy can often be traced to hereditary antecedents, yet in some cases careful but severe treatment will save them, where otherwise their bad instincts would lead them to destruction. If, however, such treatment, through neglect of parents or others, be delayed until the child is somewhat grown, it will in most instances fail, for criminal taint has had opportunity to develop and permeate the character. Such a child is morally frail, with little power of resistance, and liable to fall in the least temptation. A few seem to have a sort of blindness and want of comprehension, being absolutely under the sway of their instincts and impulses. For these there is little hope. They have neither pride nor fear; they lie with audacity, attributing to others what they have done themselves. Some of them are chiefs of little bands, often well organized, to steal. They have all the vices, which they avow with revolting cynicism. They seem also to have an instinctive appetite for alcoholic drinks.

True it is there are boys, and ever will be, who will not escape the penitentiary despite all the advice, precept, and good training you may shower on them. This class, however, comprises a very small per cent of the whole, when we consider the large number of the decent, respectable, law-abiding young men who graduate from industrial schools, and who have taken their place alongside the busy workers of the world, proving themselves good citizens, making an honest living, and leading exemplary lives.

The so-called "bad boy" is not half so bad as his reputation. The greatest fault with him is that he is misunderstood, because he has been neglected; he has gradually developed from bad to worse until at last he is in the clutch of the law. Then it is he is given up for lost, and oftentimes thrown in jail with vile, vicious, unlawful men, who delight to further aid his downward course.

Boys who are not criminals, but the victims of circumstances, who have broken the law between the ages of eight and sixteen, should never be placed in

jail on a common basis with common prisoners. They should not be punished, but educated. Experience proves that they quickly respond to kind treatment and home-like influence. It is to this end the industrial school was established.

Critical Age.

It has been found in France that, from twelve to fourteen, boys are most frequently sent to reformatories, and girls from fourteen to fifteen years of age. The ages of twelve for the boys and fourteen for the girls are critical. This is the time when the children of the poor seek employment, escaping the control of the school, without coming back under the charge of the parents. At this age, also, passions begin to develop and youth becomes an easy prey to the temptations of the street. Thus, the school is, in itself, a safeguard as long as the child attends it, but it also seems to indicate that the school is incapable of arming the pupil against the temptations of life when he has ceased to attend.

Pascal called the child a little impulsive being, who is pushed indifferently toward good or evil, according to the influences which surround him. Like soft clay, of whatever form, it cannot resist the hand of the potter.

Defective Home Life.

There are parents who are unworthy and others incapable or negligent. There are mothers and fathers who, by their conduct or bad treatment, put their children in peril. These are mostly drunkards.

The family ties are weakened by death of both or one of the parents, by disease, and by poverty. Against these little or nothing can be done.

The movement of the people from the country to the city, and the floating character of the population, tend, with the loss of native ground, to lessen family sentiment. The unhealthy, promiscuous conditions surrounding tenement houses, the insufficiency of woman's wages, the deplored condition of the young girl in the lower classes, cause a disintegration of the family life.

Then the numerous clubs, both women's and men's, mean so much time taken from the family life. The increase of divorces, of which the children are innocent victims, the second marriages, often inspired by egotisim and selfishness, —these make family life a mere name.

Formerly the father went to work alone, and the mother remained at home to attend to her household duties and look after the training of the children. Now the wife goes out with her husband, leaving the children at home alone or in the charge of other people. Formerly the father came home early from work and greeted his children, adding to the influence of the mother by firmness and kindness. Now the father may return late, or only to remain a short time, and then goes to the saloon, or to fulfil some so-called political duties.

Unfortunate School Children.

It is said that many children attending school are in want of food; some come without breakfast because the parents do not get it for them; as a little boy said, his mother got drunk and could not get up to get it. Such children are very irregular in attendance, which is a great annoyance to a teacher, not to say a waste of public money. Such children live in the poorest neighborhood; they have no regular meals; fully a third live in one room with their parents; their waking hours are divided between school and the street; saloons are sometimes as numerous as one to every hundred adults; those on the verge of pauperism patronize them. Yet there is good order in these schools; the street urchins are trained to respond to right rule, affording ground for hope as to their future. At home they have no training; they need encouragement; they should be lifted up from their surroundings and gain a better taste for things. The difficulty is caused more frequently by poverty and shiftlessness at home than by neglect and vice, yet the latter have great influence. Compulsion in its ordinary form is practically useless in making such children regular in attendance at school. The parents are characterized by improvidence, want of purpose, and no regard for the future of their children; as soon as their boy is through with school he is put on work which prepares him for nothing, and thus he drifts into casual employment, trusts to chance for a liv-

ing, and gradually sinks. The poverty, misery, and vice of the next generation will, to a large extent, come from the slum children. Their need is education in habits of decency, cleanliness, self-respect, the rudiments of civilization and domestic life; their instruction should not be too abstract, nor technical in the sense of fitting them for competitive examinations, clerkships, or college; but rather for the workshop, factory, trades, or the home.

Children Should Be Cared For.

There is apprehension that the excellent equipment of modern reformatories and industrial schools, such as electric lights, bathroom, most improved methods of heating, free medical service, free dentistry, excellent teaching, lectures, entertainments, the best of food, many comforts the poor would call luxuries, solid buildings, elegant situation, fine scenery, superb cottages approximating to a refined country home,—that the providing of these and many other advantages for the young who have gone wrong may take away that wholesome fear of jail or prison, which doubtless keeps many a youth from committing crime; that all such comforts should be provided by the state for its enemies may make the idea of crime much less abhorrent and thereby tend to increase it among the young.

Let it be admitted that such treatment of wayward youth does sometimes lessen the wholesome fear of prison. It may be remarked that allowing the young to be arrested and remain in jail a few days will lessen such fear much more and have a damaging effect upon the youth forever after, if not preparing him for a criminal career.

But the state allows children born in unhealthy surroundings to remain in them, and until they break the law they are not considered subjects for reform. The state should give the young a chance, and the industrial school and reformatory, with all their elaborate equipment, are for this purpose.

Reformatory Discipline.

It is almost a truism of discipline in a reformatory, that the conditions inside should approach those outside as near as possible, so that on the prisoner's release the change may not be so sudden as to precipitate his early fall. He probably becomes an evil doer gradually, and if he becomes a good citizen the change must be as gradual. The importance of the application of the individual method is evident here. It seems rational that one in charge of a penal or reformatory institution should know at least the important details as to the character and life of every individual under his charge. The practical value (not to mention the scientific value) is obvious. This applies as well to all the under officers, who are much more in contact with the men. We say it seems rational, if the men are to have intelligent and proper treatment.

One trouble, as in other institutions, is the want of thoroughly trained men. It is as true of a prison as of a university, that buildings do not make it, but men. The public, however, are unwilling to pay for trained men. Even the wardenship of a prison is not regarded as a very high political office, nor are intellectual qualifications a conspicuous requisition. The regular duties of a warden (not to mention his political ones) leave him little time and less energy to make an individual study of his prisoners, and too many of the under officers are incapable from lack of education or intelligence, or both. Many of the criminals are more intelligent than their keepers, whom they are admonished to respect.

Children Have Positive Rights.

Every child has the right to a proper bringing up. If it have no parents, or its parents cannot give it the rearing it has a right to, the community or the state should do it. If its parents are unfit or unable or indifferent as to its welfare, the child is certainly not to blame, and the state should see that it has a chance in the struggle for existence. Such a child at best will have enough disadvantage, when helped by the state, as compared with the child who has good parents. The fact that some parents would be encouraged to neglect their children if the state undertook to see that children are properly cared for is no reason why the children should suffer. Parents who care so little for their children

as practically to give them up are parents whom the children might as well be without. That there are many children in any community who have improper homes is a fact too well known. Almost any policeman can tell you of parents with whom it is detrimental for the children to live. As those children are to be future citizens, it is incumbent upon the state to see that they have at least a chance to become good citizens.

Laboratory Methods of Study.[1]

The modern methods of reforming criminals, which we have referred to briefly, are not only of great importance, but have proved successful in restoring to the community many who have become useful citizens. Yet after all has been said, these methods are more or less palliative. They really do not go to the root of the matter. They are the best we have been able to do up to the present time.

As in science, the laboratory method of study is the most fundamental, so in criminology it is equally necessary, if trustworthy knowledge and permanent results are to be obtained. If sociology and criminology are to become sciences in the rigid sense, the direct road thereto is the laboratory method.

The term "laboratory" is used in the broadest sense. Thus studying a criminal in his cell mentally, morally, and physically, and with instruments of precision, constitutes a laboratory.

It is a curious circumstance that the study of the criminal himself has been almost entirely neglected; and this is the reason we know so little about the real causes of crime,—how much is due to environment, and how much to the nature of the criminal; also, just how—by what steps and processes—does environment or inward nature, or both, lead to criminal acts. The lawyer studies books, but not the criminal. We say this is strange; for in medicine, the physician always studies the individual who is sick, in order to treat him properly.

Large sums of money are being contributed for palliative measures, yet crime and pauperism are increasing in proportion to the population, showing that such measures (almost the only ones) are not adequate. It is not intended here to criticize in the least any efforts to alleviate suffering, but such alleviation is usually temporary and may even increase the disease. Investigation of causes is therefore imperative, and this cannot be done without scientific study of the individuals themselves.

The Reformatory a Laboratory.

Since at least a majority of the inmates of a reformatory are normal, their crime being due rather to their unfortunate surroundings than to their inward natures, and since abnormal persons—that is, those positively abnormal in at least a few respects—are nevertheless normal in most things, whatever, therefore, may be found true of the inmates may be true to a large extent of all young persons brought up in similar conditions of life.

Thus the study of the inmates of a reformatory, and the results of such investigation, can be of use to the whole community at whose expense the reformatory is supported. It is therefore not unjust or unreasonable to make the reformatory a humanitarian laboratory for purposes of study, provided no injury be done the inmates.

As an illustration of this method of inquiry the following plan to study 2,000 boys in reformatories may give a more definite idea of such investigation. It would consist in a physical, mental, moral, and social study of each boy, including such *data* as age, date of birth, height, weight, sitting height, color of hair, eyes, skin, first born, second born, or later born, strength of hand grasp, left-handed, length, width, and circumference of head, distance between zygomatic arches, corners of eyes, length and width of ears, hands, and mouth, thickness of lips, measurements of sensibility to heat and pain, examination of lungs,

[1] For some results of laboratory work (by writer), see "Defects of Development in Children," published (in German) in Jahrbuch fur Kinderheikunde, Berlin, 1910; also, "Circumference of Head, Cephalic Index," etc., "in Relation to Mental Ability and Sociologic Condition," etc., in Journal of the American Statistical Association, Boston, December, 1911; also, "Man and Abnormal Man" above mentioned.

eyes, pulse, and respiration, nationality, occupation, education, and social condition of parents, whether one or both are dead or drunkards, stepchildren or not, hereditary taint, *stigmata* of degeneration. All *data* gathered by the institutions as history and conduct of inmates might be utilized.

Just as every state employs a health officer, not only to stop but to prevent disease, so the state should make provision for preventing crime, by employment of the best methods known to science and sociology.

Educational Methods Can Be Studied.

As has been stated, the inmates of institutions for the delinquent differ little from individuals outside. The excellencies and defects of an educational system can be carefully studied in these institutions, for all are under the same conditions and can be controlled in all details of their life. Here is an opportunity for the rational method of treatment, which is, first, to study the moral conduct and unfavorable characteristics; and, second, to investigate their causes as far as possible. Knowledge thus gained will be the most reliable in correcting evil tendencies or preventing their development. By such a method no sudden results should be expected; gradual progress is all that can be hoped for. A thorough study of this nature in penal and reformatory institutions is possible; the effects of the method of education can be closely observed physically, intellectually, and morally. Thus, when, for instance, an inmate ceases to reverse his drinking cup after using it, which is required for purposes of cleanliness and order, this, though a very slight thing in itself, indicates that he is becoming careless and losing his will power to reform. By a sort of radiation other negligences are liable to follow, confirming the direction in which he is tending. A good report from his keeper, on the other hand, can signify a new resolution of the will. Thus a series of records indicate, so to speak, the moral and intellectual pulse of the inmate. What might seem a very slight offense outside of a reformatory institution is not so within, where there is a minimum of temptation to do wrong and a maximum of encouragement to do right, so that there may be a gradual education in the formation of good habits, which are the surest safeguard to the inmate after his release.

There are innumerable stages between the absolutely normal and the absolutely insane. The lunacy of many criminals is not recognized at the time of their conviction, but only later on. Prison statistics show that the proportion of prisioners who are adjudged insane is very large, and that the proportion of prisioners who come of demented or epileptic parents is still many times larger.

Now it is absurd to believe that only those criminals who are wholly insane are necessitated to their crimes by their affliction. Every kind of mental weakness or derangement supplies its quota of crime. Man's action is certainly conditioned in large part by his material organism.—Ray Madding McConnell, Ph. D.

The Indeterminate Sentence Law

BY De HULL N. TRAVIS

Member of the Michigan State Board of Pardons.

THE laws provided by any nation or state for the government of its people furnish a fairly accurate measure of its advancement in civilization; of its conception of the duty of organized society to itself and to the individual citizen; and of that vitalizing, progressive spirit in it without which it cannot maintain its usefulness as a force for the uplifting of humanity.

Tried by this standard, Michigan holds a foremost place among the states of the Union. We have gone far toward substituting for the old system of retributive punishment a plan of reclamation. In keeping with this idea, more humane methods of treatment are now employed when it is found that the offender is a criminal by reason of defective mentality, a degeneracy due to criminal ancestry, or culpability caused by a vicious environment during youth, when his mind was plastic and easily given the bent that determined his character and conduct for later life.

The Old Way.

For an interval after Michigan was raised to statehood we had fixed sentence for all criminals, with no allowance for good conduct. Only the governor, through exercise of his executive prerogative, could give the convicted offender relief. He could commute the sentence or grant a pardon arbitrarily, but the dominant idea then in the administration of the criminal law was that the trial judge should have the power to fix the time to be spent behind bolts and bars. The executive power was but rarely exercised on behalf of offenders against the laws of the commonwealth.

The first step of departure from this merciless system of dealing with criminals was taken in 1862, when recognition was given to the beneficent principle that even a criminal who is incarcerated in a penal institution is entitled to some reward for good conduct. In that year a law was enacted which provided that a convict should be allowed a specified number of days each month in curtailment of his sentence, for good behavior as a prisoner. This law was found to have an excellent influence on convicts serving sentences in the prisons, through the encouragement it offered them to obey rules and work faithfully at the tasks to which they were assigned. It affected a noticeable improvement in prison discipline, and in other ways was fruitful of desirable results.

The Parole Came Next.

The next important advance made came many years later, when a parole law was enacted. Under this law the governor was empowered, on the recommendation of the advisory board in the matter of pardons, to grant a parole to any convict who had shown himself deserving of that clemency by continuous good conduct in the prison. Under the rule adopted by the board of pardons, a convict who had served half his sentence became eligible to parole, and might be allowed his freedom, on conditions imposed by the board and governor, for a fixed probationary period, at the expiration of which he was granted a full discharge.

Then came the indeterminate sentence law, operative in 1903, and amended in 1905 to relieve it of certain crudities that marred the original enactments. By the provisions of this law the trial judge fixes the minimum term, which may not be more than half the maximum, and may recommend the term for which, in his opinion, the offender should be held before being granted a parole. The maximum is the full limit of time for which the convicted person can be sentenced for

his offense under the law applying in the case. With the exception of cases in which, owing to the serious nature of the crime, only the governor can grant a parole, or where the sentence is for life, the board of pardons had the power to parole and impose the conditions on which the convict is released. The law, as amended in 1905, has now been in operation for over six years, a period affording sufficient opportunity for a fair test of its merits.

What is this law accomplishing in the prisons of Michigan? Before going into that question it may be well to consider briefly what the attitude of the lawbreaker is toward constituted authority in any of its forms, when he feels himself in the grasp of the law for the first time.

Criminals in the Making.

With very rare exceptions, he has rather thoughtlessly taken a course that could only end in bringing him into conflict with the social organization built on and controlled by law. He was denied proper home training through the neglect of his parents or guardians, and in default of this he grew up without acquiring a true perception of the duties and obligations of citizenship. His moral training was also neglected, hence he had no definite views as to right and wrong. Finally he committed an offense that resulted in his arrest. He was given a preliminary examination in a court where the law massed its forces against him, where the atmosphere was palpably unfriendly, and where after a hearing perfunctorily conducted, he was bound over for trial in the circuit court. Then he was bundled off to jail, where he was incarcerated until his trial came on.

And now again he is haled into court, this time for trial on the charge against him. There he finds that he is plainly an object of aversion. He is awed but not favorably impressed, for already he is looked upon as an outcast, and the sense that this is so intensifies his hatred of law. He is convicted and hustled off to the penitentiary, where he is to pay his debt to justice,—a debt that he believes will be exacted with the usurious requirement and merciless harshness.

Now let us bear in mind that this youth—for most convicts are nothing but mere boys when first sent to the reformatory or penitentiary—has drifted into evil courses by an easy progression from the first downward step to the next, giving little or no thought to consequences, until he is brought to a halt by an officer who arrests him, and is landed in jail, charged with commission of a felony. For the first time he feels the power of the law. The thought comes to him that he has recklessly aroused the wrath of a mysterious, intangible, but mighty force that can crush and destroy him. He may regret his folly bitterly; may cry out deep down in his heart, for another chance to make better use of his life; but who is there to hear him or give him wise and kindly counsel; to plead for him, in extenuation of his wrongdoing, that he was not altogether to blame; that he sinned ignorantly and through evil influences that had surrounded and swayed him from infancy, leading him astray before he had the knowledge to choose wisely or had acquired the will power that might enable him to put aside temptation?

Providing First Friends.

The law provided no such friend and counselor for the wayward youth taken for his first offense. Ordinarily he had no money, no friends who were able or willing to come to his aid. He is tried, convicted, and sent to the penitentiary, and he expects that his treatment there will be similar to that which he has experienced thus far in his career,—unstinted punishment for his every misdeed, with but scant encouragement given him to amend his ways and behave decently.

If a convict of this type is to be turned from criminal courses and make a good and useful citizen, the effort to reclaim him must be made a part of the discipline to which he is subjected when he enters the penitentiary. If there is punishment for bad conduct, there should be a reward for good conduct. He should be brought up to understand that the state has his welfare at heart, and that it desires and seeks his reformation; that the law which punishes him for misconduct has, nevertheless, a beneficent aim

in the restraint it imposes on him; that even when it seems to be harsh in its treatment of him it has as its supreme purpose his ultimate good.

Right here and now is where the indeterminate sentence law begins to be effective for the work that must be done if this sullen, defiant criminal, cynically skeptical as to the honesty and good intentions of the prison authorities, of the board of pardons, of the state itself, and of all the agencies by which society is seeking to aid the erring and the unfortunate, is to be saved from himself; if he is to be won to faith in the wise and honest purpose of the governing power that has brought him to punishment for his misconduct, but which sincerely desires to win him from criminality and transform him into a law-abiding, order-loving, and useful member of society.

Lining Up New Prisoners.

As a rule, the newly incarcerated offender has but a vague conception of the nature and purpose of the indeterminate sentence law. We will suppose that in this case he has been given a minimum term of two years and a maximum of ten, a not uncommon sentence. The warden explains to him that the law has in view giving him a chance to obtain his liberty on parole at the expiration of his minimum sentence, or in two years, provided his prison record shall show him deserving of that clemency, and a safe person to be allowed his freedom. The beneficent object of this provision of the law can be strongly brought to his attention. It can be impressed on his mind that this law has been enacted by the legislature and made effective in order that he may, by showing himself amenable to the prison regulations and an efficient worker, shorten his time of confinement and resume his place in the outer world, to become a worthy member of society. It can be pointed out to him that the law seeks his redemption and aims to build up in him character, strength of purpose, and honesty of intention, and that if he meets its overtures to him, as expressed in this merciful provision, it lies within his power to regain his lost standing among men as a respected and useful citizen.

Almost without exception the decision is made then and there that he will obey the prison rules and conform to all our requirements.

Reclaiming Men.

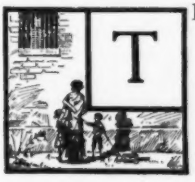
I have purposely confined myself to a consideration of convicts sent to the penitentiary on a first conviction. It is my belief that, with a judicious administration of the indeterminate sentence law, and the right kind of men in charge of our penal institutions, the first-time convict who has been given his chance and failed to make good use of it may safely be assumed to be irreclaimable, and beyond the reach of any reformatory influences that the state can bring to bear on him. That class of convicts is made up of our defectives, the hopelessly degenerate, and perverts in whom all good impulses and aspirations have been destroyed. They constitute a part of the wastage of humanity, which should be dealt with and treated solely with reference to the safety of society, for which they are either lacking in essential faculties that no human power can endow them with, or have become so depraved that they are past redemption. Properly applied, this process would in time restore the honesty and usefulness of the reclaimable element among the inmates of our prisons, before the prison environment has sapped their manhood, leaving the worthless residuum to be dealt with by methods derived from a more enlightened experience, and having solely in view the better protection of the great body of our people from the aggressions and depredations of that class of malefactors.

AUTHOR'S NOTE.—I wish to give due thanks and credit to Honorable James Russell, warden of the Marquette prison, who, through his long and efficient service in prison management, has collected exhaustive *data* which has enabled the writer and other students of penology to secure a comprehensive understanding of the practical as well as legal construction and application of the indeterminate sentence law of Michigan.

Organization of Systems of Probation

BY HON. CHARLES A. DE COURCY

Justice of the Supreme Judicial Court for the Commonwealth of Massachusetts.



THE two essentials for any successful system of probation are: Judges who have an intelligent and sympathetic interest in the work, and probation officers fitted, by temperament and training, to secure the best possible results.

To further define these essentials,—we need judges who will not discredit the system by extending probation to persons not likely to profit by it; and who will apply it whenever it can be done with due regard to the protection of the community, and where the past history and present disposition of the person investigated indicates that he may reasonably be expected to reform without punishment. And we need probation officers who possess not only sympathy and zeal, but knowledge of human nature, tact, firmness, and patience.

How shall we secure such judges and officers? It is such a human problem that it is difficult to conceive of a man otherwise fitted for judicial position who will not apply probation with intelligent sympathy when its possibilities are called to his attention. Here is a field for education of the judges. Frequent conferences should be held among them, and between them and the probation commission of the state. The judges most earnest and experienced will enkindle the interest and enthusiasm of their associates. Interchange of their several views and experiences will tend to secure uniform standards and improved methods everywhere.

Selection of Probation Officers.

How to secure suitable probation officers is the most important problem in the probation system. Realizing that this must be somewhat determined by local conditions in the several states, I shall not discuss the abstract question of the relative merits of the New York system of selection, based on civil-service examinations, and the Massachusetts method of placing unrestricted power of appointment in the judges. Rather will I deal with the problem in the light of local experience.

Here in Massachusetts, where all judges are appointed for life, and where probation has long been part of a judicial system, the appointment of probation officers by the judges of the several courts has proved satisfactory in the majority of cases. The larger part of the officers in the commonwealth measure well up to the ideal standard, and their work is correspondingly fruitful. But in a matter so vitally affecting human lives, no community should be denied the advantages of a good probation officer. The chief cause of complaint to-day in Massachusetts arises from the persistence of some judges in retaining as probation officers deputy sheriffs, clerks of courts, and men physically incapacitated by age or other disability from properly performing the duties of the position. The reasons which dictated our law prohibiting active members of the police force from serving as probation officers apply with like force to deputy sheriffs, who are considered a part of the police department in many places; and the duties of clerks of our local courts are inconsistent with those of a probation officer. Even if such officials had the time and desire to perform effective probation work, their identification with the prosecution would prevent them from gaining the confidence of the probationers. That these objections are not merely theoretical ones is apparent from a comparison of the courts whose probation officer is also deputy sheriff or clerk, with courts having a like number of criminal cases

whose probation officer is not burdened with such inconsistent work. The returns for the past year show that less than one half as many cases are taken on probation by the former as by the latter courts. It is true this condition arose in the early days of probation, before the importance and character of the work were fully realized. Yet when the state commission called attention to this subject in their last report, but few of the judges removed such officers. And at a recent hearing before a committee of the legislature, on a proposed amendment to the law, prohibiting the appointment of deputy sheriffs, clerks of court, and bail commissioners as probation officers, these same interested incumbents appeared with counsel in opposition to the recommendation of the commission. The result was the familiar one of the success of organized selfishness. Consequently, the friends of probation in Massachusetts should now organize to secure from the next legislature a needed amendment to our probation laws that will remedy this defect which has developed, and will tend to secure that ideal for which every system of probation is organized, *viz.*, a suitable probation officer for every court in the state. My recommendation is,—an amendment to the probation law, providing that every appointment must be approved by the state commission; and that unless, after a careful inquiry into the qualifications of the appointee, the board within thirty days certifies that in their opinion he is qualified by temperament, training, and experience for the office, the appointment shall be void. The amendment should be made applicable to present incumbents as well as to future appointees; and a similar examination and certificate should be required every five years to prevent the retention of officers physically unable properly to perform probation work. In the case of officers grown old in the service of the state, a pension provision may well be adopted.

Such a law would not substantially interfere with the judges' power in the case of good appointments; it would relieve them from the pressure to make mediocre ones, and it would be a needed check on the few judges who have no real interest in probation and persist in making unfit appointments.

State Board.

An essential element in the organization of systems of probation is a central state board. As probation is a part of the judicial system, I favor the Massachusetts method of appointing its members, by the chief justice of the superior or trial court. And where, as here, a majority of its members are judges, the efforts of the board are most likely to secure the co-operation of the judges throughout the state.

The state board should have power to prescribe forms of records and reports; to suggest uniform and efficient methods of work by the officers, and promote coordination among them; and, in general, it should have ample authority to supervise the probation work throughout the state. Where it also has authority in approving appointments, and arranges for frequent conferences of judges and of probation officers, as above suggested, the organization of the probation system seems complete. Inasmuch as the board must act mainly through its executive officer (in Massachusetts, the deputy commissioner), the personality of this officer is of the first importance.

Personality of Officer.

So much for organization. It is important, but not as an end. The most perfect engine is ineffective until vitalized by the motive power. We must provide for each locality the form of organization that will then and there tend to secure and maintain the most efficient probation work. But, as the departmental committee on the English "probation of offenders' act 1907," recently reported: "The value of probation must necessarily depend on the efficiency of the probation officer. It is a system in which rules are comparatively unimportant, and personality is everything. The probation officer must be a picked man or woman, endowed not only with intelligence and zeal, but in a high degree with sympathy and tact and firmness. On his or her individuality the success or failure of the system depends. Probation is what the officer makes it."

Rational Justice

BY CHARLES RICHMOND HENDERSON

Professor of Sociology, University of Chicago

THE worst enemy of real improvement is the sentimentalist; that is, the person who is swayed by emotion and is ignorant of remote consequences. There are two groups of sentimentalists,—those who are moved by pity, and the others who are swept by revenge. Law cannot rest on either compassion or bloodthirst, only on calm justice and reason. But "justice" is not that abstraction of tradition which is drawn from examination of texts and precedents; much less is it a mere negative demand for measured compensation or expiation, which is difficult to distinguish from barbarian punishment.

It was an immense step forward when political society made the treatment of crime impersonal, and dealt with it as an offense against the general public, leaving the pecuniary and moral damage to be indemnified by civil process. The man who is stung and pained by an enemy is naturally a poor judge of what is due and proper. The court, with its deliberate procedure and rules of trial, give time for the blood to cool, passion to ebb, and for social reason to intervene. Technicalities have grown rank and become a tangled jungle where reason is lost, but in their origin they had a meaning, and, properly pruned, they should be retained; their function is to assure a full presentation of all relevant facts. Procedure helps to eliminate merely impulsive sympathy for the offender and also the outburst of revenge in presence of loathsome and horrible crime.

Social Protection.

Humanization of criminal law does not rest on the single principle of reformation of the individual convict. That is too narrow a basis. The primary consideration of rational justice is social protection and positive furtherance of character in all members of the community. The man who has violated law ought to be willing to suffer pain, since experience has shown that lawlessness cannot be prevented without the use of fear. Suppose we were absolutely certain that a man who has robbed his neighbor is deeply penitent, ready to restore the money, and sure never to repeat the offense, still it might not be wise to release him. "General prevention" is necessary, and thus far no means have been found except deterrent punishment for this purpose.

Austere Enforcement of Law.

The removal of children from the sweep of criminal law by the juvenile court legislation has lifted one weight from the courts. The development of psychiatry has also enabled the judges to enforce the criminal law in all its austerity upon responsible persons, without having the remorseful reflection of punishing those who were rather subjects for medical treatment. The recent probation laws have relieved courts of another embarrassment, for it has enabled them to hold doubtful cases under desirable discipline and control, while materials for a sound judgment were being collected. Probation laws have also made it possible to give severe and wholesome treatment to men without making them worse and more dangerous to society by incarcerating them. The parole system is another invention which makes it possible to turn the most austere and painful penalty into a reformatory discipline. It does not require a relaxation of justice, but gives to justice a new and effective instrument.

Habitual Criminals.

There is one vital point at which the ancient criminal law is practically bankrupt and requires radical improvement. Paradoxical as it may seem, the old Codes are too feeble in dealing with the habitual criminal, the professional enemy of society, the man whose very character makes him dangerous to our physical security, our property, our health, our order, and all else that is precious in civilization.

The reason is obvious when stated: the traditional criminal law regarded too exclusively the ill-desert of the crime, and too little the character of the criminal. It would be false to assert that the older school of lawyers and legislators paid no attention whatever to the offender himself, because the range between maximum and minimum penalties and the discretion of judges in some countries gave room for some discrimination. But, practically, and in our country the habitual criminal gets off too easily for his own good. He serves his time, "pays his debt," and is as free as any honest citizen. It is true the police are watching him; it is their duty to protect the public; but they have laid upon them a herculean and impossible task. Our great cities give shelter and support to a horde of men who are known to be dangerous and yet have unlimited freedom. In respect to this large class our present criminal law would be more humane if it were built on social facts, rather than on a traditional fiction.

We do not stand for a doctrine popularly but erroneously ascribed to Lombroso, and ask for the elimination of men simply on the ground that they are ugly and look as if they ought to commit crimes. But it does seem reasonable when a man is convicted of an actual crime that we should find out what that atrocious deed signifies, how it stands related to previous conduct, what menace it contains for the future. Already courts and juries, within the range of discretion legally permitted them, give a shorter penalty for the single offender and a longer term for the hardened brute. But this is not adequate; it is not serious, and it fails. The paroled man may be watched and recalled because he is only conditionally released; but the professional burglar, always potentially and often actually a murderer, goes scot free and is the same man at heart as before. Police supervision of him is illogical, but unavoidable, and does not protect society. It ought to be clear that a man who has repeatedly resisted all efforts to reform him should be held under direct legal control until his conduct proves that he may safely be set free. Whether this control should be maintained in a prison or outside, under the supervision of parole officers, would depend upon the character of the person concerned.

In the "individualization" of treatment, the state board of parole or "rehabilitation" is an important factor. It should be composed of men of highest character, should be guided by legal and judicial talent of the first rank, and should be independent of the administration of prisons and placed above partisan politics. Before such a board, prisoners and paroled men might be brought periodically, and the treatment adjusted to their conduct. Thus society would be protected, every motive to reformation offered, and the demands of humanity and rational justice reconciled and satisfied.

The student of social welfare is compelled to criticize the present criminal law chiefly because it is a half-hearted measure of protection. It does not go about its work seriously, and stops short of achievement. Sometimes it seems to have savage ferocity, as in case of capital punishment, where no attempt is made to transform character, and the modern standpoint is entirely deserted. But the death penalty occupies a small place in actual practice, so rare that where it is inflicted it is partial and inequitable. Apart from this occasional reversion to the barbaric practice, the criminal law seems to play with habitual criminals. The offender reveals a persistently dangerous character, and yet is treated by law as if he were a man safe to be absolutely free, having "paid his debt." This is not mere "legal fiction;" it is falsehood; and rational justice cannot be identical with a lie.

Injustice of the Penal Codes

BY EUGENE SMITH

Of the New York Bar.

President of the New York Prison Association.

THE Penal Codes of all the states in the Union are drawn after the same pattern. They consist, and from time immemorial have consisted, of definitions of crimes and a statement of the punishment allotted to each separate crime. The aim of the Penal Codes has always been to graduate and apportion this punishment according to the degree of guilt involved in each crime. These degrees of guilt are expressed in terms of years of imprisonment, life sentences, and capital punishment; retributive punishment, inflicted on offenders and exactly apportioned in each case to the amount of guilt indicated by the particular crime committed; this is the ideal of justice that seeks embodiment in the Penal Codes.

Disparity between Penalties.

It must be remembered that the criminal law of all the states alike is founded upon the common law, and that this same system of apportioning punishment according to the degree of guilt has prevailed for untold centuries. The conclusion would seem to be irresistible (unless the system itself is essentially impracticable) that by this time some consensus of judgment must have been reached as to the proper measure of guilt and of consequent punishment pertaining to the most common crimes; and that substantial uniformity would be found to exist in the Penal Codes of a country divided into political states, but inhabited by a homogeneous population sharing the same views and moral ideas, and united in common interests and pursuits.

As a matter of fact, the very widest and wildest diversity and the most irreconcilable conflict prevail in the Penal Codes of the several states. A few illustrations will suffice.

The maximum penalty for the common crime of perjury in the state of Connecticut is imprisonment for five years; in the adjoining state of New York, twenty years; in Maine, imprisonment for life; in Missouri, death; and in Delaware, imprisonment for ten years, with a fine of $500 to $2,000, and whipping with forty lashes.

The maximum penalty for rape in North Dakota is imprisonment for five years, in Louisiana it is death.

The maximum penalty for incest is imprisonment for six months in Virginia, and for twenty-one years in Kentucky.

The maximum penalty for grand larceny varies from imprisonment for two years in Louisiana, to twenty years in Connecticut.

It would be tedious to pursue this comparison further, for the same disparity between penalties for the same crime, as fixed in the Penal Codes of the different states, exists throughout the entire list of crimes.

Average Length of Sentences.

But it may be said that the maximum penalty is seldom inflicted, and that in the actual administration of the law, the sentences really pronounced by the courts in concrete cases may exhibit a harmony and consistency that are lacking in the Codes, and thus, after all, equal justice may in fact be attained. The United States census of 1890 affords the *data* for testing this suggestion. It contains a table giving the average length of the sentences actually pronounced for each of the principal crimes within each of the

states. This feature has not appeared in any subsequent census, but there is no reason to suppose that the figures of 1890 are not substantially applicable to the present time.

The average sentence for the crime of perjury was ten years in Florida, and one year in Maine; for rape, thirty-three and one-half years in New Mexico, and two years in Louisiana; for incest, fifteen years in Louisiana, and one year in Pennsylvania; for bigamy, four and a quarter years in Minnesota, and four months in Montana; for larceny, ten years in Delaware, and ten months in the District of Columbia, and so on.

Degree of Guilt.

The same diversity of judgment, in estimating the degree of guilt manifested by the commission of any given crime, exists among the judges who deal with concrete cases, not less than among the legislators who enact general statutes.

Relative Guilt.

The statistics thus far cited prove that there is no common standard of measurement to fix the just amount of punishment for any one crime. But the difficulty is greatly increased when the attempt is made to determine and compare the relative guilt of different crimes, and to weigh one crime against other crimes bearing no relation to it. This, however, the Penal Codes, which assume to affix its just punishment to every crime according to its degree of guiltiness, are forced to undertake. The results, as tabulated in the census of 1890, are most startling and bewildering.

The guilt of counterfeiting in Ohio is twice that of perjury, but in Rhode Island the guilt of perjury is twice that of counterfeiting.

The guilt of perjury in Indiana is to that of incest as twenty-one to five, but in Kentucky the guilt of incest is to that of perjury as twenty-one to five.

The guilt of arson in Pennsylvania is twice that of burglary, but in Connecticut the guilt of burglary is twice that of arson.

The guilt of forgery in Kansas is four times that of larceny, but in Connecticut the guilt of larceny is four times that of forgery.

The impracticable and irrational character of the theory upon which all the Penal Codes are constructed can receive no more conclusive demonstration than that yielded by a comparison of the Codes of the various states of the Union.

Object of Criminal Laws.

But, worse than this, the whole theory upon which the Penal Codes are based is radically unsound. According to this theory, the end and aim of imprisonment are retributive, the infliction on the offender of punishment commensurate with his guilt. The theory is medieval and wholly opposed to modern conceptions of the relation of the state to crime. It is now held that the object of all criminal laws is pubic protection. The state puts in prison a person convicted of crime, because the safety of society demands that he should not be at large; and it is the duty of the state to keep him in prison until it becomes consistent with public safety to set him free.

Indeterminate Sentence.

The indeterminate sentence for crime has been logically evolved from this modern view of the true function of the state; it does away with the crudity and injustice of the definite sentence for a fixed term of imprisonment, arbitrarily fixed in advance, and substitutes in its place a rational system which keeps the prisoner in confinement until he becomes fitted for freedom. Of course, a reformatory system of training and discipline during the imprisonment is the indispensable complement of the indeterminate sentence.

The indeterminate sentence cannot safely be applied to the greatest crimes, denominated capital crimes, which do irremediable and deadly harm. The danger of relapse in such case is too great to justify the risk of discharge. But, for the main volume of crime, the indeterminate sentence, enforced by an effective system of reformatory treatment, gives promise of proving the most efficient and beneficent agency ever yet devised for the repression of crime.

The Pardoning Power

BY JOSEPH T. WINSLOW,

Of the Massachusetts Bar.

IT is significant that from the earliest times no scheme of government has overlooked the power of clemency and in some manner made provision for its exercise. The pardoning power has been known and used from time immemorial in England, and the theory of pardons in the United States was inherited with the common law from that country. The power springs from the realization that human institutions, administered by human agencies, must always to a degree remain imperfect and inadequate to meet the needs of every case. It is humanly impossible to frame laws to meet the circumstances of every crime, and to secure the omniscience and infallibility of any court.

It has been said that "the pardoning power . . . answers about the same purpose in the administration of criminal matters that equity does in the administration of civil matters. Equity supplies that wherein the law, by reason of its universality, is deficient; and pardons supply that wherein the criminal law, by reason of its universality, is deficient." State v. Alexander, 76 N. C. 231, 22 Am. Rep. 675. And regarding the power, Hawkins says: "The law . . . seems to have intrusted the King with the high prerogative upon the special confidence that he will spare only those whose case, could it have been foreseen, the law itself may be presumed willing to have excepted out of the general ruling which the wit of man cannot possibly make so perfect as to suit every particular case." Hawk, P. C. chap. 37, § 8.

These reasons for the creation of the pardoning power and also equity jurisdiction always have, and always will, exist, no matter what the form of government; and the problem presented in humanizing our criminal law is as to the wisest manner in which to administer the power.

In Whom the Power Is Vested.

Anciently in England the right of pardoning offenses within certain districts was claimed by the Lords of Marches and others who had *jura regalia* by ancient grants from the Crown, or by prescription. 7 Bacon, Abr. 406. The prerogative was later vested in the King, who was intrusted with it upon special confidence that he would spare only those whose case, could it have been foreseen, the law itself would have excepted out of the general rules. And at the present day in England a pardon may and commonly does proceed from the Crown, through the Home Secretary, although, as we shall presently see, steps relieving the King of a part at least of this duty have already been taken.

In the United States the Federal Constitution gives the President the "power to grant reprieves and pardons against the United States, except in cases of impeachment." U. S. Const. art. 2, § 2. In some of the states the pardoning power is given to the executive alone, in others it is given to the executive with the advice or consent of council or other body, and in still others the power is given to pardoning boards. It has been held, however, that the pardoning power is not naturally or necessarily an executive function, and that, where the Constitution is silent, it vests no more in one branch of the government than in the other. State v. Nichols, 26 Ark. 74, 7 Am. Rep. 600. And upon the principle that the executive has only the pardoning power expressly given by the Constitution, the legislative right to exercise the power has been sustained. And it

may be stated generally that the decisions seem to be in favor of the legislative power to grant pardons before conviction, but that, while not altogether reconcilable as to the legislative power to grant them after conviction, they are, on the whole, against such power.

We are not so much interested at this point, however, with the legislative right to exercise clemency as with the right and safe-guards governing its exercise by the executive department. We are at once confronted in approaching this subject with the question as to the advisability of intrusting the pardoning power to the executive alone. This method has many supporters, among whom are Charles J. Bonaparte, who, in a recent article in 19 Yale Law Journal, 607, said: "The exercise of any form of executive clemency for whatever purpose is undoubtedly open to grave abuse; responsibility to public opinion for its employment to proper ends should be strictly and carefully defined; he who holds and uses or he who advises the holder how to use so delicate and far-reaching a power as that of pardon must be ready at all times, and to all legitimate critics, to render a just account of his stewardship. For this very reason, the power and responsibility for its use or abuse should always belong to one man, and that man the one intrusted with the enforcement of the laws, or, in other words, to the chief executive alone. If they be divided with a board of pardons, or some officer or body of the like functions, criticism is diluted and public opinion is confused." While there is admittedly some logic in this argument, the increased force which public criticism has, because of its concentration upon one individual, is more than counterbalanced by the restraining influence of the advice of a council or other body by reason of which few cases arise necessitating public censure. And it is believed that it may be safely stated that the "one man" power is not commonly believed to be wise, but that it is generally conceded that there should be some advisory body to hear and make recommendations to the executive in acting in cases of pardons.

When Power Properly Exercisable.

It is conceded under the American Constitutions that an application for clemency is of legal right, whether it be based upon a claim of innocence or excessive punishment. And a moral duty rests upon the executive to give these applications due consideration and render relief, if it is found, upon careful examination, to be a proper case for the exercise of clemency. The pardoning power then cannot be treated as a privilege. It is as much an official duty as any other act. It is lodged in the governor, not for the benefit of the convict only, but for the welfare of the people, who may properly insist upon the wise performance of that duty by him. Rich v. Chamberlain, 104 Mich. 436, 62 N. W. 584, 27 L.R.A. 573.

The propriety or expediency of granting pardons, and the reason for exercising the right, are beyond the reach of judicial inquiry. State v. Ward, 9 Heisk. 100; Opinion of Justices, 120 Mass. 600. And this, coupled with the fact that, in the absence of fraud or mistake, a pardon once granted and accepted is irrevocable and beyond the reach of any power to destroy, should deter rash and unconsidered acts by the executive. The power of pardon is founded solely upon considerations of the public good, and is to be exercised on the ground that the public welfare, which is the legitimate object of all punishment, will be as well promoted by a suspension as by an execution of the sentence. And the final criterion governing the exercise of the power in all cases should be whether the welfare of the public as a whole will be best served by the granting of the petition. And here it may be well to state that the particular wishes and interest of the accused or his family or friends are immaterial, except in so far as these individuals constitute an infinitesimal part of the public affected.

In view of the increase of crime in the United States it behooves executives and their advisers to act cautiously and wisely in the exercise of the power of clemency, remembering that the humanizing of the law means the humanizing for society as a whole, and not alone for those seeking mercy.

In his inquiry the executive is not bound by the judicial record of the case, although this is sometimes erroneously supposed. Opinion of Justices, 120 Mass. 600. His inquiry should be independent of all prior proceedings, although the facts appearing upon the trial should be considered and given their proper weight in connection with the other evidence.

The first duty of the executive in making an inquiry is to obtain, so far as in him lies, full information of the whole case from reliable sources. In doing this he should not be limited by the rules and standards of legal procedure, which, because of technicalities, too often result in a disclosure of but a small part of the truth. He should carefully consider the judicial proceeding, the prosecution, the statute or law violated and its intent and purpose, the condition of the public mind at the time of the trial, and when the offense was committed, and he should further take into account the former career and character of the accused. Weighing all of these, he should reach his decision by giving his honest answer as a servant of the people, to the question of whether the public welfare demands the use of the power of clemency in the case in hand.

Grounds for Pardon.

Apparently no court has attempted to declare what grounds or motives should prompt the exercise of the pardoning power. English history tells us of pardons granted because the prisoner was a good soldier, or a friend of the King's mistress, or a useful rascal, or a man of wealth able to pay handsomely for his life. King James II. and Bloody Jeffreys, the one filling the jails and the other emptying them as soon as the stipend was paid, did a profitable partnership business with the latter class.

The grounds for the granting of pardons necessarily cannot be specifically named, else there would be little cause for the existence of the power. The Constitutions give the executives the broad authority to exercise the right of pardon, without attempting to specify the grounds therefor. A number of causes have, however, become commonly recognized in appropriate cases as instances justifying and calling for the exercise of the power. Among these may be mentioned, injustice of conviction, excessive severity of sentence, satisfaction of the demands of justice, and necessity to obtain evidence against other criminals. Reformation is also recognized in some cases as a ground of pardon. And the executive practice in many states comes near to a rule of law that a consumptive, or one afflicted with a similarly incurable disease, shall not die in jail.

When all is said concerning grounds for pardons, however, we come back to the principle before stated, and the question determining whether a ground for pardon exists is solely whether the public welfare demands the exercise of clemency.

Misuse of Power.

Warning has before been given against vesting the pardoning power in one man. The mere mention of the dangers of abuse where the power lies entirely with the executive at once calls to mind a gross abuse of this power recently in Tennessee, in which state the governor was vested with the one man power. A prominent politician was killed either by an intimate friend of the governor, or by the son of such friend, the affray growing out of insulting comments on transactions involving the governor himself, no less than his friend, which were published by the deceased, who was a newspaper editor. The governor appeared as a witness for his friend at the trial, and did not conceal his natural desire that the defendants be acquitted. They were, however, convicted and given substantial sentences, and upon appeal the conviction of the father was affirmed. Within a few minutes after the affirmance the governor granted him a pardon on the ground that in his (the governor's) opinion his friend was innocent, and further that he disapproved of the rulings of the trial court, and of the verdict, and also the decision of the appellate court. It is needless to say that none of these excuses constitute a ground for the exercise of the high power given the executive in trust to be exercised only for the benefit of the trustors. A more flagrant abuse of his power by a trustee

could hardly be conceived of, and this case should do much toward the abolishment of the "one man" power.

One other misuse of the pardoning power should be mentioned, and that is the growing tendency to imitate the bounty of kings upon their birthdays or marriages by setting felons free. The tendency referred to is that which has become common in some states of liberating at Christmas time, almost at wholesale, murderers and other prisoners convicted of high offenses. When we consider the increase of crime in the United States, the great difficulty of obtaining convictions under the present system of criminal procedure, and the antideterrent effect of such a custom, we are forced to the conclusion that, while there is no objection to the liberation of criminals at the Christmas season, yet no more liberality should then be allowed in the judgment of the executives or pardoning boards, because of the Christmas spirit, than is allowed at other times; but the same cool, calm consideration should be exercised in protecting the public welfare at that time as at others, giving freedom to the prisoner if a proper case is presented, but not giving freedom at the expense of the people as a whole.

Substitutes for Pardoning Power.

The pardoning power has before been referred to as occupying the same place in criminal law that equity occupies upon the civil side of the court. As equity, originally only exercisable by the King, was turned over to the courts, so the pardoning power should in a large measure eventually be delegated to the judicial department. In England by the criminal appeal act of 1907, this has been done. Concerning this act in 74 Justice of the Peace, 206, it is said: "The act, it is true, expressly leaves untouched the prerogative of mercy; but, except in cases where fresh evidence is subsequently brought to light, or questions of a prisoner's health arise, it is hardly likely that a Home Secretary (who acts for the King) would interfere with a decision of the court of criminal appeal as to the propriety of a conviction or sentence. Moreover, it is probable that where a prisoner petitions the Crown, instead of appealing, the Home Secretary will avail himself of the power of referring the matter to the court, either for their decision or advice. This power exists whenever a prisoner petitions either against his conviction or sentence, except in the one instance of a petition against a sentence of death, the exception being rendered necessary by the fact that in cases of murder neither the trial judge nor the court of appeal can exercise any discretion as to the penalty, whatever may have been the circumstances attending the commission of the crime."

The perfection of the criminal procedure of the courts by allowing them to deal with crimes by individual study, and the treatment of the individual offender under the authority of proper probation and parole laws, will to a large degree do away with the frequent call for the exercise of the pardoning power by the executive, and will, it is believed, at the same time substitute therefor a method which will better effect the ruling object of the pardoning power, which is the attainment of justice and mercy to all concerned.

Criminal Law For Men

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OUR present Penal Codes are for the most part built upon theories of punishment that are coming more and more to be considered unsound. The idea of vengeance underlies many parts of our Codes. An eye for an eye; a tooth for a tooth; every fault demands a proportionate punishment: *Fiat justitia pereat mundus,* —these propositions stand unded our Codes. But the foundations are gradually being undermined. The new Codes, as, for example, the Draft Penal Codes of Germany, Austria, and Switzerland, have caused a revolution in penal law. The positive school of Italy, after long and weary years of fighting and waiting, is beginning to come into its own. The old theories of deterrent, of retaliative, and of retributive punishments, are giving way. The dawn of the new age is peeping out of the East. The criminological ideas of the positive school, which are founded upon observation of and experiment upon criminals, are superseding the ideas of an older, more backward, and more barbarous time. Penal law at present takes no account of the criminal. It has in view only the crime. Murder, theft, burglary, robbery find niches in the Code. But there is no provision for or even allusion to the murderer, the thief, the burglar, the robber, and of course, none for the particular living, breathing person who has come to the bar to answer to a charge. We now put convicted persons into a section of the penal law, then we sentence them to prison, and turn them into numbers. When they come out we expect them to be men. They are nothing of the kind. They commit other crimes, and we shut them up again and turn them once more into numbers. And the wheel of the mill continues to go round till death parts the criminals from the world. Such a proceeding upon the part of society commends the ingredients of the poisoned chalice to society's own lips.

The true theory of punishment is based upon natural necessity and the right of self-defense. Beccaria, a classical criminalist, and Lombroso and Ferri and Garofolo, members of the positive school of criminology, agree upon the necessity, and consequently the right, of society to protect itself against antisocial individuals.

Antisocial Acts.

What, then, are antisocial individuals? Do they commit antisocial acts because of a desire to do what is prohibited, or do they commit them because they cannot help it? It is the contention of the followers of the classical school of criminology that a criminal runs counter to the law because he wants to; and it is the contention of the positive school that he does wrong because he cannot help it. Crime is no metaphysical entity; it is a natural phenomenon, produced by natural causes. This position does not militate against a true conception of the freedom of the will. "The doctrine of philosophical necessity," says Mill, "correctly conceived, is simply this,—that, given the motives which are present to an individual's mind, and given likewise the character and disposition of the individual, the manner in which he will act might be unerringly inferred; that if we knew the person thoroughly, and knew the inducements which are acting upon him, we could foretell his conduct with as much certainty as we can predict any physical event. This proposition I take to be a mere interpretation of universal experience, a statement in words of what everyone is internally convinced of. No one who believed that he knew thoroughly the circumstances of any case, and the characters of the different persons concerned, would hesitate to foretell how all of them would act." (System of Logic, pp. 581, 582.) Now what are the motives operating upon the mind of an individual at any particular time? The psychology of a man is determined by the conditions of his birth, and by the conditions of his life after birth. In other words, hereditary and environmental influences decide the state of a man's mind at any moment of his life. Three factors go to make up the psychic content: the organic, anthropological, or congenital factor; the social factor, including family, social, economic, and political conditions; and the telluric, including the climate, the topography, and, in general, the geography of the country. If we knew all the influences in a man's life, we could predict the conduct of that man to a certainty. A person, then, does an act, social or antisocial, as the result of the operating influences about him.

Heredity and the environment have made him what he is.

Responsibility for Antisocial Acts.

Is he responsible for his heredity or for his environment? If he is not, upon what theory can we punish him? He who commits an act decreed by society to be against its interest is antisocial. But where does the responsibility for his failings properly fall? Is he to be repressed upon the supposition that he has had a free will, which enabled him to choose the right, and an intelligence to see the right? And how are you going to measure the amount of his moral responsibility which in turn will determine his legal responsibility? The only rational ground of punishment is social defense. We ought not to punish for frailties which the individual could not but acquire from the environment, or receive from his parents, but we ought to provide means by which society may protect itself from antisocial men. Society allows the man to be what he is. Society compels the man to be born what he is, to live the life that makes him what he is. A festering environment provided by society produces a degenerate race. This race gives birth to malformed and degenerate children, to insane persons, epileptics, syphilitics, born criminals, criminals with pronounced tendencies to acts contrary to the public weal. These degenerate children, these born criminals, rot in an atmosphere furnished by the society that ought to nurture them tenderly. The "criminal" is the victim. It is society that is the criminal. And how does society assume the responsibility? Does it undergo punishment for what it has neglected to do, and for what it has badly done? On the contrary, the perpetrator of the wrong visits the victim of the wrong with double punishment. Society first makes the man commit a crime, and then it claps him into a dungeon for having done what he was forced to do by society itself.

Duty of Society.

If, then, society has any right at all to protect itself from the consequences of its own mistakes, it can do so only upon the ground of self-preservation. But, in defending itself, it ought to be tender to him whom it has made what he is. It must do its duty by him now, so far as in its power it lies, and make it possible for that man to live among his fellow men. If society finds that a certain man is not fit to live among other men, it is its duty to make him fit to live among them. The readaptation of the criminal to normal social life is its business. Does one demand much of society to ask of it to give back what it has taken away? Should society proceed with a stone heart and an armed hand and blot out a life at one fell swoop, or pitch it into a cell and let it wear away?

Let me not be misunderstood. I am not preaching mawkish sentimentality. I admit the right of society to defend itself, and I concede the right of society, when the occasion demands it, to use drastic measures. It is one thing to advocate a proper theory of punishment with its legitimate consequences, and another thing to recommend a weak leniency which will be more deleterious than salutary to society.

Protection and Reformation.

The strong current of modern thought is not vengeance against the offender, but the protection of society and the reformation of the criminal. We cannot separate those who are morally responsible from those who are legally responsible. We must have one consistent theory, or none at all. Everyone is legally responsible for the crimes he commits, whether he be morally responsible or not. Insanity, for example, does not excuse from legal responsibility, because this responsibility is based upon the protection of society. The morally responsible person must be segregated from society, not because he has offended society and the latter wants to wreak vengeance against him, but because society must protect itself, and it can protect itself only by excluding the offender from social life, either temporarily or permanently. The morally irresponsible must be separated from the normal life of the community also for the protection of society. Whoever lives in society has the advantages of social life, and must, if he does not adapt himself to the ways recognized as proper by the community, suffer the disadvantages of exclusion from that life.

Since, then, the failings of individuals are in large part due to the neglect of society, why should not society bestir itself to bring about normal conditions which would produce social, instead of antisocial, members? Can society do anything to drain the swamp? Can society do anything to purify the sources of life?

Factors of Crime.

The three factors of crime are the biologic or hereditary factor, the family and social factor, and the geographical factor. Of these the simplest to change is the social factor. This last may be considered under five heads: the economic sphere, the political sphere, the scientific sphere, the legislative and administrative sphere, and the educational sphere. The positive school gives illustration upon illustration of the way in which improvements can be brought about in each one of these spheres. And these improvements will, in turn, strengthen the members of society and make them adapted to social life. For instance, a decrease of taxes on necessaries would have beneficial effects, not only in economic affairs, but also in respect to commercial frauds. The severe punishment of frauds will have little effect, but the change of the incidence of the tax as a penal substitute will have great and immediate beneficial effect. Immunity from taxation for the minimum necessary to existence, by preventing distraint and the consequent diminution of small properties, which means the increase in number of

the very poor, will prevent many crimes. The homestead exemption law has done more good than the promulgation of volumes of penal law containing the severest punishments for the lightest crimes. Public works during famine and hard winters check the increase of crimes against property, against the person, and against public order, while the death penalty for theft or assault, or breach of the peace, would be laughed at or utterly ignored. Again, for the prevention of political crime, such as assassination, rebellion, conspiracies, and civil war, arbitrary repression by the police authorities is powerless. As Ferri points out, there is no other means of prevention than harmony between the government and the national aspirations. Italy has been a conspicuous example of this. Under the rule of the foreigner, neither the scaffold nor the galleys could hinder political outrages; but national independence has blotted them out. So it has been with Ireland, and is coming to be so with Russia. Germany discovered it could not stamp out Socialism with penal laws. In preventing many offenses of a social and political character, political and parliamentary reforms are much more serviceable than the Penal Code. Once more, science, which creates fresh instruments of crime, such as firearms, the press, photography, lithography, new poisons, dynamite, electricity, hypnotism, must find the means of combating these instruments. We must not depend upon the Penal Code. That can do little for us. We must look to science to invent or discover other instruments with which to fight the harmful ones. And, in fact, the press, anthropometric photography of prisoners, the finger-print system, telegraphy, railways, steamboats, wireless telegraphy, toxicology, and dissection have neutralized the deleterious effects caused by the other inventions and discoveries. Systematic bookkeeping, because of its clearness and simplicity, prevents many frauds, or makes frauds easy of detection. Checks, by avoiding the necessity of frequent conveyance of money, do more to prevent theft than the severest punishments and tortures could ever do. In the legislative and administrative sphere, wise testamentary legislation prevents murders; laws which make provision for children born out of wedlock are excellent as against concubinage, infanticide, abortion, exposure of infants, indecent assaults, and murders by women after seduction. Lying in hospitals and home attendance for young mothers might do much to prevent infanticide and abortion. But an article of the Penal Code is miserably ineffectual. In the sphere of education, a respect for motherhood, and toward the young inexperienced woman, untaught by society in matters of sex, who has committed a sexual indiscretion, a more tolerant eye would be highly efficacious in preventing suicide, murder, abortion, infanticide, theft, and prostitution,—that hell of woman and that plague of society. But the alleged sword of Damocles of a section of the penal law is in truth a straw which is blown out of its place by the least breath of wind. Many of the causes of crime would be nipped in the bud by checking degeneration through the physical education of the young, and by preventing demoralization by means of the education of abandoned children at such institutions as the workhouse, and ragged and industrial schools, or by the boarding out of children. A healthy public taste that would not bear the flourishing of pestilential publications in which crimes of the worst sort, done in the worst way, are elaborately, salaciously, and alluringly served, could do much toward lessening crime.

Better Conditions.

It is the first function of society to better the conditions of life. It is the first duty of society to give to its members strong minds and bodies and healthy environments to thrive in. It cannot shirk this prime obligation. In making the world into which the individual comes a pure world to live in, the succeeding generations will be sounder and sounder organically and psychically. Punishment, as it is at present administered, is one of the least effective measures of prevention. It does not even repress. It is a sanguinary proceeding which spills blood into the ground from which springs the red tree of crime, redder and hotter and fiercer than ever. The bloodless remedy for criminality is the only sure remedy and the only sane one. By preventing the effect of criminality through eradicating the causes of it, we reach the only safe and permanent solution. Crime is a social ill, and social remedies must be applied to it. Punishment is not adequate to cure such a natural and social phenomenon as crime. Crime has its own natural and social causes, which must be studied, understood, and uprooted. Every society, said Laccasagne, has the criminals that it deserves to have. Let us exert ourselves to throw off this incubus by combined action in the proper field. Legislation should be pointed towards improving family and community lot. Law and punishment are instruments, though very slight ones, in the fight against crime. Let us not neglect them. But let us not pin our abounding faith to them. Let us turn our eyes and direct our hands to other instruments, more effective to combat the dragon that menaces.

We have seen that the social state can be changed and so help to diminish crime. We have seen that this change will kindle the light of a healthier, a normal, posterity fit to live in society. Both the hereditary and the environmental grounds will be fertilized. The race will be not antisocial, but social. But what, if anything, can be done about the telluric factor in crime? Can you change the geography and the climate of a country? Directly, no. Indirectly, yes. Railways have linked the extremes of continents together and made robberies of wayfarers less frequent. They have prevented the development of criminal tendencies in persons, and have changed such tendencies into social ones. In Italy the coming of the railway sounded the death knell

of brigandage. In America the modern Twentieth Century Limited has thrown into the great backward and abysm of time holdups of the mail coach, and assaults and robberies of the passengers. Irrigation has changed the face of nature. The Suez canal has revolutionized commerce and travel, and redirected the activities of men. And the Panama canal will do likewise. Dykes have made countries habitable. Discoveries, explorations, and settlements of new lands, as in South Africa and in Australia, have turned people who would have been or already were criminals in the older countries into military leaders and successful warriors. But it must be conceded that of all the causes of crime the telluric or geographic cause is the least under man's control.

Study of Criminals.

There is a further obligation upon the shoulders of society. It is the study of the antisocial man. Criminological science has taught the importance, yes, the necessity, of scientific investigation into the criminal. Criminology, like other sciences, is based upon observation and experiment. And the theory thus arrived at is put into action. Modern criminology is not only a theoretic exposition of philosophic and juridical principles; it is also a physical and psychic study of the criminal, and of the environmental conditions that urge him to crime. It is an attempt to influence legislation in accordance with the principles established by it. The cry of criminology is not the worn out cry of science for the sake of science. It is first, last, and midst, science for the sake of life, science for the sake of the criminal, science for the sake of the commonweal. Legislators allow the microbes of criminality to develop their pathogenic powers in society. Criminology attempts to stir the legislators up to their duty to destroy those pathogenic powers. We have up till now punished and punished without healing: We must now begin to heal without punishing. We debase, degrade, and brutalize the criminal in our prisons, and we then say to him, "Go out now; but do not do as you did before."

> "They starve the little frightened child
> Till it weeps both night and day.
> And they scourge the weak, and flog the fool,
> And gibe the old and gray.
> And some grow mad and all grow bad,
> And none a word may say."

The criminal, in the words of an English poet, is by all forgot, and rots and rots with soul and body marred. The classical school went in for the diminution of penalties; the positive school goes in for the diminution of crime. What, then, does criminology teach us about criminals? There are, as Huxley was fond of saying about hypotheses, criminals and criminals. The only classification we have now in our Codes is into burglars, robbers, thieves, murderers, and so on. And the punishments we dose out are proportioned to the moral gravity of the crime. Not once do we glimpse the criminal. He is lost out of sight. In fact, we do not know he exists. The living, palpitating man, the doer of the crime, we see not. Only the sword of mechanical, impersonal justice descends upon the criminal, only the last act in the series is performed upon the criminal. And the act is determined not by a study of the individual, but by a stereotyped formula which we make fit all persons who commit a specific act. Whether the criminal may be benefited in this way or in that, and why he may be so benefited, never enters into the calculations of our Code drafters. These have one remedy for all kinds of ills, for murder, for fraud, for larceny, for obscenity, and that is punishment. Their dosimeter measures out a certain quantity of punishment for a certain crime, and expects the criminal, who is given no heed and no attention in the whole process, to come out of the crucible purified,——all gold, and no dross. This, I submit, is false procedure. The object of society in segregating the antisocial man should be self-defense. The individual's power of offense should be counteracted by the collective defense of society. But this is not all. Society should aim also to make the antisocial man once more a suitable member of society. The readjustment and readaptation of the criminal to social life should be the purpose of society. The police should arrest, the district attorney should prosecute, the public defender should defend, the jury should convict, the judge should sentence, and the prison official should execute the sentence. But these officials should not be separated from each other, and should not be unmindful of the previous and the later steps. All should work in harmony to produce the much-desired transformation,—the readaptation of the criminal to social life. How can we produce this transformation? Study the criminal; classify him; sentence him through a judge cognizant not only of juridical matters, but also of psycho-bilogic and sociologic doctrines; provide suitable institutions to receive him.

Types and Treatment.

The positive school that has won such glorious battles in the past thirty years has divided criminals into born, insane, habitual, occasional, and passion criminals. Each one of these types requires different treatment. Is it hard to classify a given criminal? It is. Is it impossible? It is not. We need not dwell upon metaphysical problems, such as the problem whether society is justified in determining a given man a born criminal who is inevitably and irresistibly driven on to crime, and in snuffing out his life, or imprisoning him for ever. The objection to doing this is the cry of ignorance, which asks how can you assume the grave responsibility of deciding the future of a man upon an examination of his physical, psychical, and environmental conditions. We already do kill for murder. We assume to say that the man who has murdered shall have no quarter, and shall be made incapable of more crime. How can society be squeamish and exclaim: "You must not say this man is a born criminal. You have not enough

facts to base a true opinion upon. He has committed theft. Theft is not murder. We kill only for murder. Yes, if you so please, an eye for an eye, a tooth for a tooth is our motto. But what of it? We cannot steal from one who has stolen. But we can do something equally as good. We can clap him into jail and keep him there for five years. Of course, it makes no difference to us whether when he comes out he will do as he did before, and whether, after we have put him once more into our treadmill and our school for becoming more expert in antisocial acts, he comes out more fierce and determined and skilled than ever, and continues his eternal round. Of course, it makes no difference to us if he does all these things to us. He has a right to do it. He has not committed a wrong which has traditionally been considered as grave as murder, and so what would you?"

Such reasoning is vicious. We had better leave it to the legal metaphysicians by trade. We are confronted with a grave practical problem. Heavenly exactitude cannot be got in mundane affairs. We must be content with approximations to truth and to right.

The point I wish to make is that these different classes of criminals should be treated differently. The criminals through the passion of love or jealousy or honor, for instance, are not dangerous to the community. They will not relapse and they have admirable qualities, which, rightly directed, are the main springs of moral society. Their disease passes away with the cause that gave it birth. Why should they be punished in the same way as habitual or professional criminals?

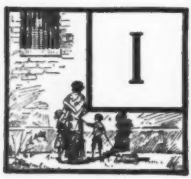
Practical Reforms.

What are the practical reforms the state should institute? Since the particular prisoner that comes to the bar is to be treated, why should he be treated in just the same way as any other prisoner? There are thieves and theives, there are murderers and murderers. This thief is different from that one. The first needs a short stay in prison, or in the reformatory, or in an agricultural colony, or in an industrial school; the second needs a long one. The stay of the one is temporary; that of the other permanent. And since it is foolish for society to deprive itself of the services of a quondam criminal become honest, and unjust to the man, it is proper to release the criminal when society finds him readapted to social life. First. Do not sentence your prisoners to a fixed period of servitude, debasement, and brutalization, but to an indeterminate time of education, trial, and experiment. Second. Have your civil and criminal judges separate in office. Criminal law, if it is to be properly administered, is a long and difficult study and requires unremitting time and patience on the part of judges to understand the criminal and to sentence him in the proper way. Third. Teach criminology in law schools, to pave the way for experts on the criminal bench. Fourth. Give your judges more power over the destinies of criminals than they have now. Fifth. Put the children of convicts in industrial schools, and in houses of correction. Catch the future criminal in the bud and give him ample time to flower as a useful member of society. Sixth. Adapt your treatment to different kinds of criminals. Some need the lunatic asylum, some need work in the open, some need work in the shop, some may be sent to the mines; it is better that criminals be sacrificed to fire damp than that honest workmen should be. Seventh. Abolish the cellular system in prisons, and establish agricultural colonies. Eighth. Attach experts to your criminal courts to examine and classify criminals. Ninth. Give the state the right of appeal. If the individual has the right to say that he shall not be condemned through the mistake or ignorance of his judges, society also has the right to demand that those whose acquittal is equally the result of mistake or ignorance shall not be allowed to go free. Tenth. Give the appellate court the right to increase tne punishment already meted out by the lower court. Society has rights which the individual must respect. Even in the classic land of the habeas corpus and of intense personal freedom, the appellate court may increase the punishment. Eleventh. Let the state compensate the individual for judicial errors. If it has prosecuted unjustly, let it stand the expense and offer at least partial balm. Twelfth. Let the perpetrator of a wrong indemnify the victim of it. Thirteenth. Employ, for occasional criminals, the suspended sentence. Fourteenth. Treat habitual criminals as pests of society. Fifteenth. Compel reparation of damage in the case of the criminal through the impulse of that passion which is not antisocial, but excusable, such as the passion of love and that of honor.

The Attitude of Society Toward the Criminal

BY EDWARD T. DEVINE

Editor of The Survey



N so far as there is a difference between the spirit of the law and the spirit of the Gospel, our Penal Codes breathe uniformly the spirit of the law, and not that that of the Gospel. A literal interpretation of the Old Testament, and not a reading of the spirit of the New Testament, is their inspiration.

The Mosaic Law.

Let us choose almost at random, not an exceptional bloodthirsty passage, but one which fairly and moderately expresses the penology of ancient Judaism, tempering justice with mercy even as it sternly formulates its conception of justice. To our purpose are the twelve curses recorded in Deuteronomy xxvii.:

"Cursed be he that removeth his neighbor's landmark.

"Cursed be he that maketh the blind to wander out of the way.

"Cursed be he that smiteth his neighbor secretly."

And so on, in each case ending with the solemn words:

"And all the people shall say Amen."

Compare our modern New York Penal Code, similarly specifying particular offenses in great detail, and ending each category of offenses with the formal and significant words: "Shall be guilty of a misdemeanor," or "Shall be guilty of felony."

The Spirit of the Gospel.

The New Testament gives an instance of righteous anger and the prompt administration of a just and appropriate remedy:

"And Jesus went into the temple of God, and cast out all of them that sold and bought in the temple, and overthrew the tables of the money changers, and the seats of them that sold doves,

"And said unto them, 'It is written, My house shall be called the house of prayer; but ye have made it a den of thieves.'" (Matthew xxi. 12, 13.)

This was evidently no formal and constitutional process of law. Legality was, no doubt, rather with the money changers and merchants. The spirit of righteousness and justice burst into a consuming flame in the face of which shrewd and technical compliance with statutes was burned away, leaving the thievery and commercial greed in their nakedness and impotence. The positive side of the new dispensation finds frequent and clear expression. With hypocrisy and self-aggrandizement, Jesus of Nazareth had scant patience.

But with weakness of the flesh, with errors of judgment, with offenses against the law, He and His Apostles had infinite patience; and for petty offenders in particular they seem to have had extraordinary compassion.

"Be ye therefore merciful, as your Father also is merciful.

"Judge not, and ye shall not be judged; condemn not, and ye shall not be condemned; forgive and ye shall be forgiven." (Luke vi. 36, 37.)

"We, then, that are strong ought to bear the infirmities of the weak, and not to please ourselves." (Romans xv. 1.)

"Remember them that are in bonds, as bound with them." (Hebrews xiii. 3.)

"If a man say, I love God, and hateth his brother, he is a liar; for he that loveth not his brother whom he hath seen, how can he love God, whom he hath not seen?" (I John iv. 20.)

I do not interpret these passages to require of us, if we would act in their spirit, that courts of justice, police systems, and penal systems should be abolished, and that we should give unlimited license to those who would assault their neighbors or their neighbors' wives and children, or to the cunning brain that would deprive the neighbor of the fruits of his toil. Tolstoi, it is true, has little difficulty in demonstrating that our present plans work badly, and almost persuades the sympathetic student of his philosophy that a literal acceptance of the injunctions not to judge and to resist not evil would hasten the millennium. The picture which William Morris presents in "News from Nowhere," of the young man who has slain another and is nevertheless at large in society, the object of great pity and kindness from all his fellows, knowing remorse and undergoing a purification of heart, appeals even to our dull imaginations.

Problem of Prevention of Crime.

We are not under the necessity of going so far, of accepting such extreme views, which break, or appear to break, with the canons of common sense and with the normal and orderly development of our political institutions, and which would endanger the peace of society. It is not, however, utopian to demand that we take seriously the elementary problem of the prevention of crime, and that we act more consistently upon those clearly defined principles of penology on which all serious students of the subject are agreed. We are not dealing seriously or even fairly with this problem.

We are but playing a huge game, in which the respective parts performed by judges, juries, policemen, criminals, and jailers are all well understood. We go through certain motions, with perfectly sober faces, in accordance with the rules of the game, and we assume that we have done our duty, when in fact we have only done what was expected of us,—expected by the criminals among the rest.

Fine or Imprisonment.

The kernel of the matter is that, from time to time, we arrest and try certain persons,—though we more often fail to arrest them under precisely similar circumstances,—charging them, when they do fall into the net, with the commission of specific offenses, and if we find them guilty we punish them by fine or imprisonment, according to the previously arranged definite schedule; so many days or so many dollars, according to the assumed seriousness of the offense.

It would seem to require no extended argument to show the absurdity of the attempt to measure the quality of an offense on the same scale with the size of a fine, regardless of the offender's financial circumstances, or with the length of a term of imprisonment. These things are not comparable, and the false assumption that they are vitiates our whole penal system.

Professional Criminals.

Charles Dudley Warner many years ago justly said that the world would one day look back with amazement to a time when perfectly well-known professional criminals were arrested and committed repeatedly for short definite terms of imprisonment, and after the expiration of each term allowed and in effect encouraged to resume their depredations on society.

I have myself seen a woman, charged in the night court with disorderly conduct, found guilty and fined, who had been similarly charged and found guilty and fined two hours before in the same court before the same judge. I asked the policeman who stood at my elbow what the effect was of such treatment as that, and he said with disgust that of course its only effect was to drive the woman out again to earn in the same way the money to pay the fine.

Function of Criminal Authorities.

We imagine that we have changed this

Teaching Illiterate Convicts.

by our partial and limited introduction of a system of indeterminate sentences and the establishment of one or two reformatories, but the change which is necessary is one which cuts much deeper than we have yet gone. What we need is a radically different conception of what our courts and police and reformatories are for, what their function is, what they are to do for us.

What we now expect them to do is, in a word, to discover and punish crimes.

What we ought to ask them to do is to prevent the commission of crimes, to check firmly and definitely each individual career of crime at its outset, and isolate definitely and charitably those who are congenitally unfit to be at large in society, and those who, from deliberate and unalterable choice, are at war with the social order.

The New Penology.

Prevention, reformation, and permanent custodial care for incorrigibles, are the essentials of a civilized system of penology. Vengeance and punishment and all manner of attempts to make the penalty fit the crime are earmarks of an obsolete system. A penitentiary warden once said at the prison congress: These men (the prisoners) are sent here to be punished, and it is our business to see to it that we punish them as much as possible. Another still more crisply remarked that the end of punishment is to punish.

An accomplished assistant district attorney in this county insists that a desire for vengeance underlies the greater number of prosecutions now undertaken in our courts. Propositions to reintroduce the whipping post, pulpit apologies for atrocious lynchings, and the general acquiescence in police clubbings of unoffending citizens, and in the administration of the wholly unlawful and medieval third degree, as a means of extorting confessions, sufficiently attest the survival of uncivilized and unchristian ideals among us.

The new penology has not yet been fully formulated, but if I understand its spirit it is at one with Christianity in its refusal to judge, in its mercy, in its unlimited forgiveness, in its readiness to bear the infirmities of the weak, and in its scorn of hypocrisy and deceit, which

are all too prevalent in the relations now existing between lawbreakers and law enforcers. There are already many fragmentary indications of what the new penology will be like. John Howard and the sentimental reformers may not have understood it clearly, but the abuses which they scourged were certainly at war with it, and the humanity for which they stood is one of its foundation stones. Lombroso and his associates, in a more scientific scheme of criminology, may be one sided and eccentric; but it is their merit that they have at least conceived the problem seriously, and are ready to take the consequences of their radical theories. And the underlying thought of their system, —that it is the individual whom we are to consider, and that in order to consider him we need the help of the physician and the psychologist as well of that of the lawyer and jurist; that the specific offense which is charged is of significance only as it throws light on the relation of the offender to society and on the attitude which society should take towards him,—this is another foundation stone which the builders of to-day may reject, but which may yet become the head of the corner.

Brockway and the zealous advocates of the reformatory system may not have carried their principles fully into successful execution, and the claims that have been made as to the percentage of reformations accomplished may prove to be exaggerated, but the idea is sound and practicable, and the genuinely indeterminate sentence, with its corollaries of education, strict discipline, active and appropriate occupation, and conditional release under surveillance, are the prophecy of a rational system.

Probation for first offenders may indeed for a time be the ridiculous farce that we in New York city have for the most part made of it. Let any citizen who thinks this strong language ask the commissioners of accounts for a copy of their report on the night court, or read the stenographic reports of the testimony given by magistrates and probation officers before the legislative commission now investigating the courts of inferior criminal jurisdiction. But probation taken seriously as a positive influence over the conduct of probationers, as a few men and women here and elsewhere have illustrated its possibilities, is another fundamental feature of a rational and serious penology.

And so there emerge gradually the outlines of a logical, consistent, sympathetic attitude of society towards the individual offender; a just, humane, and Christian attitude, implying no wish to judge him, but a wish to restrain him from injurious and destructive conduct, and to confirm him in a lawabiding and useful life.

At one end of such a penal system as this attitude requires, we find an infinite variety of educational and constructive social measures, designed to cultivate right principles of action. At the other end of the system, we find schools and clubs and social activities consciously at work to turn the surplus energy of youth into fruitful and beneficent channels. We find, instead of police system, criminal courts, and prisons, each working independently, a great municipal department for the prevention and elimination of crime, with a social police and magistrate and probation officer and reformatory and hospital or colony for the permanent detention of incorrigible offenders, each taking an appropriate place in a co-ordinated, carefully devised system of dealing effectively and comprehensively with crime.

The change which we need is not in details. These will come inevitably as a result of our change of heart. With less than our present expenditure of money, we could eventually prevent the vast majority of the crimes committed in our midst. We are not now trying to do that. We are painfully maintaining a *modus vivendi* by which some criminals sometimes are caught and punished, and by which young offenders are by our own act put under conditions which virtually insure their becoming hardened professional criminals. Thus we both judge one another, unchristianly and uncharitably, and put a stumbling-block and an occasion to fall in our brothers' way. May God forgive us and teach us wisdom.

The Prisoner as Public Property

BY E. STAGG WHITIN, PH. D.

General Secretary, National Committee on Prison Labor.

[Ed. Note.—An expansion of this thesis, worked out after several years' study of the actual conditions in the prisons, has been placed in book form by the author, under the title of "Penal Servitude," and may be secured through the National Committee on Prison Labor, New York.]

THE state has a property right in the labor of the prisoner. The 13th Amendment of the Constitution of the United States[1] provides that neither slavery nor involuntary servitude shall exist, yet by inference allows its continuance as punishment for crime, after due process of law. This property right the state may lease or retain for its own use, the manner being set forth in state constitutions and acts of legislatures. To make this of material value the prisoner's labor must be productive. The distribution of the product of the prisoner's labor inevitably presents the problem of competition, and the unfair competition between prison-made goods and those produced by free labor has over-shadowed the fundamental evil inherent in penal servitude, and has caused confusion in the thought underlying prison labor regulation by legislative enactment.[2]

Tendency of Convict Labor Legislation.

The usual penological analysis of prison labor into lease,[3] contract, piece price, public account, and state-use systems is impossible to use in an economic analysis of the labor conditions involved. Economically two systems of convict production and two systems of distribution of convict-made goods exist: production is either by the state or under individual enterprise; distribution is either limited to the preferred state-use market, or through the general competitive market. In the light of such classification the convict labor legislation of recent years shows definite tendencies toward the state's assumption of its responsibility for its own use of the prisoners on state lands, in state mines, and as operatives in state factories; while in distribution the competition of the open market, with its disastrous effect upon prices, tends to give place to the use of labor and commodities by the state itself in its manifold activities. Improvements like these in the production and distribution of the products mitigate evils, but in no vital way affect the economic injustice always inherent under a slave system. The payment of wage to the convict as a right growing out of his production of valuable commodities is the phase of this legislation which tends to destroy the slavery condition. Such legislation has made its appearance, together with the first suggestion of right of choice allowed to the convict in regard to his occupation. These statutes still waver in an uncertain manner between the conception of the wage as a privilege, common to England[4] and Germany,[5] and the wage as a right as it exists in France.[6] The development of the idea of the right of wage,

[1] Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.
Constitution of the United States—13th Amendment.

[2] Labor Legislation of 1911.
The American Labor Legislation Review—vol. 1, no. 3—p. 122.

[3] Penal and Reformatory Institutions.
Charles Richmond Henderson—p. 193.

[4] Modern Prison Systems.
Charles Richmond Henderson.

[5] Crime, Its Causes and Remedies.
Caesar Lombroso—p. 337–9.

[6] Le Travail dans les Prisons.
Roger Roux—p. 31.

Shoe Shop in Sing Sing Prison.

fused as it is with the movement towards the governmental work and workshops, cannot fail to stand out in significance when viewed from the standpoint of the labor movement.

In a word, the economic progress in prison labor, shown in recent legislation, is toward more efficient production by the elimination of the profits of the lessee; more economical distribution of the products by the substitution of a preferred market, where the profits of the middleman are eliminated, in place of the unfair competition with the products of free labor in the open market; and finally the curtailment of the slave system by the provision for wages and choice of occupation for the man in penal servitude.

Solution of Problem.

The problem thus stated finds its explanation in the history out of which it has grown and its solution in an analysis of the conditions existing to-day in connection with the control of penal institutions, the use of the convict's labor in their maintenance and in the production of marketable commodities, and the methods of distribution. The educational and social value of methods at present in vogue cannot be secured except by the development of a more perfect synthesis, which shall lead inevitably to constructive reform, based upon modern ethical conceptions as to the duty of the state to the individual, and conceived on the basis on which rests modern educational thought,—that the incentive of interest which brings hope overcomes the wayward tendencies of the race, and leads to the socialized education which alone fits the individual to take his position as a free agent in our highly organized modern society.

Progress in Criminal Law Reform

BY EUGENE A. GILMORE

Professor of Law in the University of Wisconsin

WHILE much of the criticism in recent years on the administration of criminal law may be ill-founded, hysterical, and supersentimental, the fact is nevertheless true that there is a great deal of intelligent and justifiable criticism which must be made. The multiplying instances of the delay or seeming miscarriage of justice, together with the indications that crime is not diminishing in this country as it is in the most progressive European countries, are responsible for the widespread feeling that American criminal law and administration are ineffective as a corrective system, and so fail adequately to protect society; that, as President Taft puts it, "The administration of criminal law in this country is a disgrace to our civilization." Defective organization of courts, cumbrous and costly procedure, and excessive emphasis on technicalities, afford an undue advantage to the lawbreaker of means, and deepen the erroneous impression that there is one law for the rich and another for the poor. Lax enforcement of laws, and too frequent abortive attempts to punish wrongdoers, breed a growing contempt for law and order. Many go so far as to assert that prompt even-handed justice is not to be expected "under the present social system." The seriousness of a breakdown in the confidence of the people in the impartiality and efficiency of their courts is coming to be recognized, and there is a growing disposition among thoughtful men, both professional and lay, to heed these criticisms and to weigh the remedies proposed.

Moreover the sciences of criminal anthropology and sociology are calling for a recasting of ideas the world over, and are making it evident that legislation and legal progress in the future must be founded upon a scientific study and understanding of the matters to which the legal profession and the public are only just beginning to pay attention. A thorough reconsideration of criminal law and procedure, in the light of the several sciences that contribute to criminology, must soon take place.

Various organizations have been at work, each striving in its own field towards a solution of some of the many problems involved. Of late years a great deal has been done for the criminal law, the criminal, and the delinquent classes. The American Prison Association, The National Probation Association, The National and State Probation Associations, The International Congress of Criminal Anthropology, The International Prison Congress, The National Conference on Charities and Corrections, National and State Bar Associations, and many other organizations, have been doing much to promote a more enlightened, intelligent and efficient administration of criminal law.

The American Institute of Criminal Law and Criminology.

One organization of recent origin should be specially mentioned in enumerating the various agencies now at work on the improvement of the criminal law, and that is The American Institute of Criminal Law and Criminology. This Institute grew out of a national conference on criminal law and criminology held in Chicago in June, 1909, under the auspices of the Law School of Northwestern University. The idea of the conference was to bring together the various classes of persons interested in the problems connected with the administration of punitive justice and the treatment of criminals. The conference was composed of about one

hundred and fifty delegates, representing the various professions and occupations concerned directly or indirectly with the administration of the criminal law and the punishment of criminals, and included members of the bench and bar, professors of law in the universities, alienists, criminologists, penologists, superintendents of penal and reformatory institutions, psychologists, police officials, probation officers, and the like. Delegates attended from every section of the country, and the conference was a very representative gathering of those either actually concerned with the administration of the criminal law, or interested in its problems as students and scientists. In character and purpose the conference was entirely without precedent in the history of the United States. It represented the first instance of cooperative effort among those interested in a better system of criminal justice, and marked the beginning of a new era in the history of American criminal jurisprudence. An elaborate program covering almost every problem of criminal science was prepared mainly from the list of topics suggested in advance by the delegates. Two days were spent in discussion and interchange of ideas, and it was resolved to effect a permanent national organization to be known as the American Institute of Criminal Law and Criminology, whose purpose is to "further the scientific study of crime, criminal law, and procedure, to formulate and promote measures for solving the problems connected therewith, and to co-ordinate the efforts of individuals and of organizations interested in the administration of certain and speedy justice."

Two conferences have since been held, the last at Boston in connection with the annual meeting of the American Bar Association, at which conference an arrangement was made for the holding of future conferences of the institute at the same time and place as the annual meeting of the American Bar Association, and providing for the publication of the annual program with that of the association, and the incorporation of the proceedings of the conference in the annual report of the proceedings of that association. The institute, during the last year, has more than doubled its membership, and a number of state societies have been established. All persons interested in the work of the institute and willing to promote its objects are eligible to membership. Interested persons are invited to apply for membership. The annual dues are $2, without the journal, or $5 including the journal. Applications and nominations for membership should be made to the secretary, Law School, University of Wisconsin, Madison.

The conference also adopted resolutions calling attention to the popular dissatisfaction with the results of our present methods of administering criminal justice; declared that reliable and accurate information regarding the actual administration of the criminal law was necessary to efficient legislation and administration; appealed to Congress to provide through the agency of the census bureau for the collection of full and accurate criminal and judicial statistics covering the entire country; and urged the enactment of legislation by the states, requiring prosecuting attorneys and magistrates to report to some state officer full information regarding crime committed within their jurisdictions and the punishment of offenders.

The institute publishes an official organ known as "The Journal of Criminal Law and Criminology." This is the first publication in the English language devoted wholly or in part to the cause of criminal law and criminology, or to the problems connected therewith, although there are numerous periodicals of this character published in foreign countries. The purpose of the journal is to arouse and extend a wider interest in the study of all questions relating to the administration of the criminal law, including the causes and prevention of crime, methods of criminal procedure, and the treatment of criminals; to provide a common medium for recording the results of the best scientific thought and professional practice in this and foreign countries concerning the larger problems of criminal science; to consider the present state of the criminal law in every branch; and to bring to the attention of all who are interested the evi-

dences of progress in legislation and administration so far as it relates to the detection and punishment of crime, criminal procedure, and the punishment of offenders. It advocates the introduction of such reforms in existing penal methods as experience and reason have shown to be desirable, to the end that a more effective, speedy, and inexpensive system of criminal justice may be secured, more modern and effective methods of dealing with criminals may be introduced, and the causes of the present widespread and increasing popular dissatisfaction with the administration of the criminal law may be removed. The Journal encourages and advocates legislation looking toward the collection and publication of more systematic statistical and descriptive information relating to the causes, nature, and punishment of crime, including judicial statistics showing the efficiency of those agencies and instrumentalities charged with the detection and punishment of crime. The journal also furnishes reviews of recent and current scientific literature in English and foreign languages, dealing with the progress of criminal jurisprudence and penal methods, together with biographical and miscellaneous notes of interest to students of the criminal law, criminology, and the allied sciences.

Recognizing the desirability of making readily available in English the more important treatises on criminal law and criminology published in foreign languages, the institute is having translated and published the following series of books on criminal science:

Modern Theories of Criminality, by C. Bernaldo de Quirós of Madrid.

Criminal Psychology, by Hans Gross, Professor of Criminal Law, University of Graz.

Crime, Its Causes and Remedies, by Caesare Lombroso, Late Professor of Psychiatry and Legal Medicine, University of Turin.

The Individualization of Punishment, by Raymond Saleilles, Professor of Comparative Law, University of Paris.

Criminal Sociology, by Enrico Ferri, Professor of Criminal Law and Procedure, University of Rome.

Penal Philosophy, by Gabriel Tarde, Professor of Modern Philosophy, College of France.

Criminality and Economic Conditions, by W. A. Bonger, Doctor in Law, University of Amsterdam.

Criminology, by Rafaelle Garofalo, Former President, Court of Appeals of Naples.

Crime and Its Repression, by Gustav Aschaffenburg, Professor of Psychiatry, Academy of Practical Medicine at Cologne.

We have two great Hebrew lawgivers,—Moses and Christ. The former justified vengeance—an eye for an eye, a tooth for a tooth. The latter said: "Overcome evil with good." We hold to the latter doctrine. Our ultimate goal in the salvation of men can never be through force, violence, and vengeance. Yet is not that the final result of jails, stripes, iron bars, and degradation? Consistent with the concession, therefore,—and we must concede it—that the days of force have not passed and the necessity for jails and prisons is still very acute—we must nevertheless keep constantly in mind that men eventually must be saved through love. It is not inconsistent with a faithful adherence of Christian ideals.—Hon. Ben. B. Lindsey.

New Horizons in Penal Law

BY GINO C. SPERANZA

Of The New York Bar.

PUBLIC opinion is growing restless over the administration of the criminal law; criticism of its procedural delays and of its technicalities is but one form of expression of such discontent. Juries acquit or render compromise verdicts against the weight of evidence, not always through sympathy for the accused, but because they feel that somehow the punishment that will follow their verdict does not fit the crime. Studious observers contribute their scientific criticism to the general discontent.

What is the trouble, what is the real basis of such general *malaise* in criminal matters? Is it that we are more merciful or less cruel than our forefathers, in our attitude towards the criminal? Partly so; but if this were all, the penal reforms recently instituted, and the infinitely more humane treatment of the criminal in our days, ought to have quieted such general discontent. Is it that our procedural system has become antiquated and does not fit modern conditions? Partly so; but if this were all, aggressive legislative efforts changing our procedure could easily meet such general disapproval.

Basic Principles of Penology.

The fact is that the popular mind has come to make part of its convictions the reforms contended for by penologists for over a century regarding the basic principles of the function of the state towards the criminal. It is true that both reformers and laymen have, under the impulse of such discontent, carried their protest beyond just bounds, by extending sympathy where it was not deserved,—resulting often in hysterical verdicts,—and thereby exposing themselves to the just charge by conservatives of a desire to override the law. In the meanwhile the studious observer, the experienced prison warden, the trained penologist, and the scientific student of crime, have come together all over the world, exchanged views, and laid the basis for a new penology. Call it more humane if you wish; as a lawyer I would rather call it a more just because a more rational system of penal law. It might be said of such system that its basic principle is that all men are not equal before the law; that the law must be certain and swift in visiting its inquiry into every offense, but must be as broad and untrammeled in applying its disciplinary remedies as human nature and the circumstances of life are different and varying. There is no doubt that in times of despotic or tyrannous rule, justice was safer if administered through a definite and meticulously specific code of methods and terms of punishment, leaving little or no discretion to judges who might be the creatures of such despot or tyrant. And I do not doubt that in a more brutal age the fear of brutal and painful punishment had its deterrent effect.

Suitable Discipline.

But now, in our days of political and judicial freedom, fear, if fear there be in the offender, should be based on the certainty of discovery by the state and of the swift application of suitable discipline. I call it discipline for want of a better word; for it is not punishment and it is not mercy, but a social means to a social end. Such end is that society shall be protected; and such protection modern penal law must attain by different means, varying from the simple fact of conviction, with no other penalty, as sufficient discipline for certain of the offenders, to the absolute elimination of the transgressor from society. In between, the state must provide divers

means of discipline—the chief of all being, as in the life of the normal man—*work*.

The old saying that "the punishment must fit the crime" is but the precursor of the modern principle that the discipline must fit the criminal, and in this respect the kind of crime is only in a few instances the stamp of a man's character. If penal science has proved anything, it is this,—that a tendency to repeated delinquency (recidivism) must be the principal and special concern of penal statutes; that while any offender is a danger to society, a man who kills under the stress of certain circumstances, for instance, may not necessarily be as dangerous to society as the persistent thief or the professional vagrant. It does not follow that the former should be acquitted, as, under our present system, he often is. Such acquittals to-day are due not to a belief that a conviction would be unjust, but that the punishment provided by existing penal statutes would be unfit. Under a more just system however—as modern penology contends for—every transgressor of the law, including such offender as this referred to, would be judicially declared such, so that the law would be vindicated in every case. It is the "punishment" to be meted out that would vary, and if the law provided for this, juries would not acquit against their oath.

Rational Methods.

So, likewise, the basic principle in the old law of incarceration as a means of punishment must give way to more rational methods. Incarceration, as such, does little good and much harm; its only practical justification is to take a dangerous member of society away from where he can do further harm. Every offender (be his crime big or little) who, because of the character of such crime or because of a tendency to repeat it, is recognized as a menace to the order of the state, should, with due safeguards, be taken out of society. Public opinion revolts against his actual elimination by death, but I think it would approve perpetual exclusion from society in a penal colony. At the other end of the criminal line is the first offender, especially the young first offender. It is towards him that the authority which imposes the "penalty," or what I would call the discipline, should have the largest freedom,—whether that authority is to be exercised by the trained lawyer on the bench or by the practical layman in the box. It is absurd that a law should fix *a priori* the manner and period by which offending members of society shall be made worthy of being allowed to return to its fold.

In the exercise of such latitude mercy may play a part, but reason and common sense, under the advice of the expert, will be the most often invoked guide. And the exercise of such power will make it possible to apply such disciplinary measures as best fit each individual case. Work, rather than mere incarceration, will, as I have stated, be the greatest discipline. How that work shall be done and for whom, and how compensated, are important questions that must enlist the learning of scientists and the experience of officers. I am aware that the question of convict labor is a very difficult one; but it is difficult because at present it is a healthy graft imposed upon an antiquated and useless plant; if the subject will be studied as a part of the new penal discipline many of the present difficulties of the problem will disappear.

The old order is surely changing: in the process of change reformers may have gone to extremes and created in the public mind the idea that criminals, under the new penology, would become pampered wards of the state, and that even more offenders would go free than under our present system. But on careful inquiry it will be seen that modern penal science stands for sound principles and methods of social protection, studying the offender in all his aspects and offering methods by which not only will the order of the state be strengthened against its enemies, but the number of such enemies be gradually reduced.

The Discharged Prisoner

BY JOSEPH M. SULLIVAN

Of the Boston (Mass.) Bar;

Bail Commissioner for Suffolk County; Author of treatise on "Criminal Slang.

THE man coming out. What to do with him is one of the most perplexing problems of society. The jail cradle has rocked him, and the boycott of humanity retards his reformation. He leaves his prison home with a manly determination to retrieve his unfortunate past, and to be no longer a menace to society. During the period of incarceration, the busy world has forgotten his existence. Overjoyed at the prospect of release, he leaves the school of misery, and with the opening of the prison door finds himself launched upon "destiny's sea." If he can manage to exist honorably for the first few weeks after his discharge from prison, there is hope for him.

The Boycott of Humanity.

The ex-convict too often finds that he has emerged into a larger prison in which he is condemned to a social solitary confinement. Society, cruel and merciless, still demands vengeance, and by its distrust, suspicion, and malice his reformation is retarded. The economic conditions of society may make a man a pickpocket, thief, and burglar, and the boycott of humanity keeps him one. Criticism of the pardons of prisoners is a matter of course at the present day; the average citizen failing to recognize the fact that the prisons sometimes hold the mistakes of judges, courts, and lawyers, or the victims of police persecution and malice, just as the cemetery contains the blunders of the medical fraternity. Was he guilty or innocent? God alone knows the number of manly forms that have been compelled unjustly to wear the convict gray, and the great Searcher of all hearts will some day right all worldly injustice.

But what shall we do with this man with the prison pallor stamped upon his face like the seal of the law's degradation?

Winning a Place in the World.

Mr. Cornwall, a recognized authority on the subject of discharged prisoners, very cleverly describes the discouraging conditions which confront a prisoner upon his release. He says: "The less publicity that attaches to the discharged prisoner the better his chance of success must be. What he needs most is work that will maintain him, and the disposition and determination to keep it when found. Those who have sought employment on the ground of 'just having been released from prison' have not been so successful as to prove this to be the best method of seeking work. It has always seemed more practical for the ex-prisoner to look for work like other people, seeking that which he can do best, and when he finds it, doing his utmost to give satisfaction to his employer.

"The ex-prisoner, of all people, has the greatest reason to dread publicity. There are many places of employment entirely closed to him. He cannot enlist in the Army or Navy if he is known to have served a term of imprisonment; neither will he be employed by the railroad corporations; the civil service of the national and state governments are closed to him. He cannot obtain a license to drive a cab in Boston. Positions of trust, where money is handled, and where the business and life records of employees are carefully looked into, will not naturally be open to him. The labor unions are another check to his hopes. To what extent he is debarred from membership therein it is impossible to say, but certain facts as to where he learned his trade, the places of his more recent employments, etc., must be unpleasant subjects to discuss. With all of these sources of employment eliminated, the discharged prisoner who is known to be such has a more limited field in which to look for work than other people. He must take the first opportunity, be it the most humble, and by faithfulness earn a place from which to move on to something better.

"Serving a term of imprisonment is only a part of the punishment inflicted upon the man who goes to prison. Working his way back into the community is his hardest task, and requires much tact and perseverance on his part, and much charity on the part of everybody else.

"The man who lets it be generally known that he is an ex-prisoner, or advertises himself as such, can hope to make but little progress. The only refuge for those persisting in this course is to connect themselves with some of the religious or charitable organizations. Only a few are capable of taking a useful part in that work. Its material returns are slow, and generally its possibilities, for them,

are limited. A few, however, with unusual talent and zeal may win a place, and should be given every reasonable chance to do so."

The world is filled with thousands of honest, law-abiding, unemployed men, and the discharged prisoner competing with them is seriously handicapped, especially if he locates upon his discharge at the place of his crime. The prisoner, if he can obtain transportation, will do better at a distance from the scenes and memories of his past. There he will have no one to taunt him, and he can honestly try to make amends for the past, and become a useful, law-abiding citizen. Employment is hard to obtain because very few firms care to hire a man who has once fallen. The prisoner has to encounter the natural prejudice against people who have served time, and if a man is fortunate enough to obtain employment he will have to encounter the malice and ill-will of former prison companions, in addition to police persecution. There is always the constant dread that someone will tell his employer about his past life, and then immediate discharge follows, and another relapse into crime.

Duty of Society.

It is clear that anyone who has been reasonably punished, and who is willing and anxious to do better, ought to be given the opportunity. It is the duty of society to extend a helping hand to the prisoner, especially if the offender is repentant and willing to make the most of himself.

Old Time Executions

Executions, when criminals were hanged in the Old Bailey, had certain customary sequels. The governor of Newgate, for instance, always gave a breakfast to those friends he had invited to see the hanging, and by established custom deviled kidneys always formed the principal dish, although, as John Hollingshead had related, nearly everyone was obliged to swallow a glass of brandy first.

Another function described in that entertaining book, "London in the Sixties," was the reception held afterward by the hangman at the Green Dragon, in Fleet Street, where he took refreshment with his admirers and sold the fatal rope at the rate of sixpence per inch.

In the good old times nearly every criminal who was executed was credited with a confession and "last dying words," whether he uttered them or not, which were printed in thousands by Mr. Catnach, of Seven Dials. And sometimes an offender was reprieved on his way to Tyburn and had the pleasure, like Lord Brougham, of reading his own obituary notice. Many of these broadsides, printed on a peculiar whitey-brown paper, can still be obtained in the neighborhood of "The Dials," at certain quaint little shops that seem to have defied alike time and the "improvement acts." You can see them in the window alongside of old ballads, forgotten comic songs, children's toys, and bottles of sticky-looking sweets.

An interesting execution which never came off was that of Edward Dennis, the public hangman, who, in 1780, was sentenced to death for complicity in the Gordon riots. He was, however, respited, and resumed his occupation. So thoroughly did Dennis regain favor that in 1785 the sheriffs of London presented him with a most gorgeous official robe, "as a testimony to his excellent mode of performing business." Dennis found this robe not only inconvenient when at work, but rather conspicuous at other times, so he sold it to Old Cain, a well-known charlatan of the day. Decked in the hangman's robe and a pasteboard crown, the fortune teller cut a most imposing figure.

Correspondence

The Recall—By One Recalled.

Editor CASE AND COMMENT:—

I notice that one of the main topics of press discussion at this time is that of the recall of judges. It seems to me this is a very vital matter,—that it is a grave problem and should be solved right,—that it should be solved justly, sanely, and to the best interests of the whole people. What is the object of government? Is it not the securing of the greatest good to the greatest number of people? There is a twofold confusion of this matter in most that we read and hear to-day. In the first place, in all discussions, either "capital" or "labor" is left out. Capital hath its champions. Labor hath its champions. But where are the champions of both capital and labor? Is not the capitalist and the laborer each a man, a citizen, deserving of equal treatment at the hands of the government? Why these cries: "Down with capital," on the one hand, and "Down with labor," on the other? What this country needs is a few men broad enough to discern the rights of both capital and labor. We now have only anarchists on the one hand, and hirelings of the "vested interests" on the other. I do not mean this as an expression of pessimism. But it is a fact—let us confront it.

In the second place, and in particular, a vast clearing up is needed of this matter of the recall of judges. Men are heard to say, "I am in favor of the recall of judges," or, "I am opposed to the recall of judges." Why the recall? Why not a recall? There are many methods of recalling judges, most of which have been put forward in one way or another by the press and by our public men. But it is clear to me that no man can intelligently oppose or favor the recall, until he is enlightened as to what form of recall is desired. Now I am a victim of the recall. I was a member of the board of education of the city of Dallas, and, as a result of a municipal recall, I was retired from the board before the time for which I was elected expired. Six other men were retired as I was. These were good men, honest, and capable. The fight against us was led by a Socialist leader. A grave injustice was done in this case. But I believe in a recall. I mean that I believe in a proper kind of recall. Most arguments against the recall of judges are based on the false assumption that judges are only to be recalled for any decision that does not please a certain number of people. Is a judge to be recalled for such trivial causes? It depends altogether on the nature of the recall available in that particular case, and not at all on whether there is a recall or is not a recall.

I am a firm believer in the rights of the whole people. I include the "capitalist" as well as the "laborer," and *vice versa*. Let the people rule! But of course, do not let "capital" alone rule, or do not let "labor" alone rule. Let the people have their right to recall their judges if they do not behave themselves on the bench. One popular argument against the recall is that it will make judges lean to public opinion. In reply, is it better that the judge please one hundred or one thousand men, or that he please one powerful man who can make and unmake judges,—and does it at his own good will? I believe, sir, that the lawyers of the country are in good position to see this matter clearly; and that the law journals, such as yours, are better adopted to spread intelligence on the subject.

Let those who advocate the recall cease their generalities, and propose not the recall, but a recall of a certain, definite nature. Shall we retire a judge because he honestly decides that the law is what we do not believe to be the law? Or shall we make it because he has dishonestly accepted a bribe in rendering his decision? This it seems to me is the question. Let also those who oppose the recall demand first "what kind of a recall is meant." While I am in favor of a recall, so it be a sensible one, I shall base my favor or opposition when the time comes to vote, solely upon what kind of a recall is offered me.

The recall of judicial decisions, as announced by Mr. Roosevelt and others, seems to partake more of anarchy than of any other thing. It is clearly unconstitutional. Its advocates say it is but an easier way of amending the Constitution. But does not the Constitution clearly state how it shall be amended? It is, then, unconstitutional to amend it in any other way. "The cart should not be put before the horse." If the method of amending the Constitution is too cumbersome, let the amending clause itself be changed, in the constitutional way. That is the only orderly way. We of the United States must progress. But let us progress in an orderly way. Let us take the first step before we try to take the second. If there are enough people in this country who will demand an amendment to the Constitution, and will then, after sufficient time for reflection, vote for such amendment, though it provide that judges be recalled once each month, I say, let the judges be recalled each month. This seems like an extreme statement. But who are judges, if they be not the servants of the people? What is government for, if not for the protection and interests of the people; that is, the men and women who live in the United States? But until the people unsay what they have already said, in the manner they have set for the unsaying of it,

would not the unsaying of it by the recall of judicial decision be disorderly and a going back on the people's word by the people?

I think we need more talk and sentiment in favor of changing our Constitutions. They are "the voice of the people" as nothing else is. But political orators have so clouded the issues that the people do not know they have a trusty weapon with which to fight the unjust courts; namely, the Constitution itself. Hence, they, seeing themselves beset on all sides, clutch at stones and sticks; to-wit, the recall of judicial decisions, laws of the legislature that are clearly unconstitutional, and every new sinecure offered by politician, demagogue, or earnest though unscientific reformer.

SHEARON BONNER.

Dallas, Texas.

Theater Hat Legislation.

Editor CASE AND COMMENT:—

Referring to your incomparable "Theater and Amusement" number, and with particular reference to the subject therein discussed: "When Is a Hat not a Hat."

Utah "has gone Georgia one better" in this regard: Section 4487, Revised Statutes of 1907, provides:

"High Hats to Be Removed at Theaters: Any person attending a theater . . . shall remove headwear tending to obstruct the view of any other person . . . subject to a fine of not less than one nor more than ten dollars for each offense, upon conviction thereof."

"Judicial mind of Mr. Taft!" What does a raw theater manager or usher know of ladies' headgear, high or low, obstructive or nonobstructive, legal or illegal, objectionable or nonobjectionable,—"Gabby," "Merry Widow," "Cardinal," "Katy," "Colonial," "Cloche," "Bolero," "Durbar," "Gainesboro," "Turban," "Quaker Poke," "Charlotte Corday," "Mushroom," and "Aeroplane," with their various and innumerable modifications, variations, ramifications, fluctuations, temptations, and attenuations, each with a meaning of its own.

Surely, surely the ladies here, though hugely enjoying the right of suffrage, do not appreciate the circus they easily might have by requiring a judicial determination of this question. In the event that I can bring this matter into clearer perspective through observation or legal determination, I shall be glad to advise.

C. F. CABLE.

Ogden, Utah.

The Single Tax.

Editor CASE AND COMMENT:—

"The single tax on land" is a misnomer, regarded as a phrase; for it is the misnaming of a process of obtaining money, and not land. Tax, or public revenue, is the thing taken. When land is taken, as the exception to the general rule, cost is entailed to the increase of tax; hence, were literal tax on land the rule, it would involve a very large increase of tax through the cost of exchange for the thing required; namely, money. Therefore, in conservation of plain language, the name of the process quoted must be changed to "the single assessment of land;" which is a process for proportioning the tax; measured by the cash value of acreage or of the front foot. It is only the ultimate land and labor product that accurately shows value; and that ultimate value is net and not gross income; for a part of gross income is consumed, hence, nothing appears for tax but net income which practically establishes its own assessment by adjusting itself to any percentage of cash appropriation. This conclusion may serve the gentleman who quoted Herbert Spencer in the March issue of CASE AND COMMENT, as a hint that research in the realm of fact may convince him that land assessment is inherently inaccurate, and not without its element of confiscation; that intuition differs from deduction and induction only by the alleged absence of the reasoning process, and not by the lack of knowledge of fact. Newton's greatest work, that relating to gravity, was deductive, and Leverrier's was initiated by the fact of aberration, hence his work was also deductive. Spencer's Data of Ethics is not without warning that isolated quotations may seem to prove what the book is endeavoring to refute.

JAMES WILKINSON.

Rochester, N. Y.

Editorial Comment

"The charities that soothe and heal and bless."—Wordsworth.

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Edited by Asa W. Russell.

Governors and Prisons.

GOVERNOR Oswald West, of Oregon, is receiving much praise for his method of treating convicts. Nearly half of the prisoners are employed on public works outside the prison grounds. Some of them are engaged in road building 300 miles from the penitentiary. "This honor system," states the governor, "does not mean that wicked and dangerous criminals are permitted to leave the Oregon penitentiary. We choose the men who are to be given the benefit of the honor system, and we choose them with great care. Any honor man who breaks faith with us is put into stripes and confined thereafter at hard labor within the penitentiary. The system has been successful, although only one year in operation, and I hope soon to extend it and to make it of greater practical benefit to the state as well as to the prisoners.

"There are three classes of criminals," continues Governor West: "Degenerates, for whom there is little or no hope; criminals from choice, who are almost invariably bright and intelligent men, and whom it is quite possible to reform; and the other class, the most unfortunate of all, the fellows who are good at heart, but have been forced through circumstances to commit crime. These boys are the ones that I trust fully. I get them away from the institution as quickly as possible, find them jobs and literally give them their freedom.

"There is no law in Oregon that permits me to do all the seemingly irregular things I do, but also, there is no law that says I shall not do them.

"Occasionally I write a note to the prison superintendent (you know I appoint the superintendent), and tell him to send a certain young man home to his family. Oregon saves $15 a month that way."

In Arizona.

Governor Hunt, of Arizona, desired knowledge at first hand about the penitentiary of that new state, so he spent a night in it as an inmate. He was locked in a cell with a prisoner serving a short term for burglary, and was subject to the prison rules until after breakfast on the following morning. His presence was known to the prisoners, and they found it a subject for joking and laughter, particularly when he was rebuked by a guard for talking at the breakfast table.

"I am convinced more than ever that such an experience was beneficial," the

governor said after his release. He certainly should have carried away with him a vivid mental picture of the surroundings, which may be useful to him in the performance of his official duties. To those who know the general need of prison reform his act will seem neither undignified nor valueless. On his return to Phœnix, Governor Hunt said he believed all governors should be required to pass one night in prison, just as the Chinese Emperors were required to turn one furrow of earth before ascending the throne.

In Tennessee.

Just before Christmas, Governor Hooper, of Tennessee, spent two days in the state prison. He subsisted on prison fare, slept on a convict's bed, and mingled with the prisoners. As a result he pardoned seven murderers, four robbers, one assailant of a woman, and one man convicted of assault.

The governor wished to get "the prisoner's point of view." "If every state executive," the governor said, "would pursue the policy I have the past two days, every state in the Union would have a parol law."

"Altogether," he declared, as he left for his home, "I feel not only that I have done good by my visit and helped many to see the way to a better life, but I feel that I myself am a better man for my sojourn behind prison bars."

"I have been deeply impressed," he said, "with the fact that heretofore the people of Tennessee have thought of only two considerations in connection with the penal system; first, how to get a man into prison; and, second, how to get him out. The great intermediate question of what to do with him and for him during his incarceration has not received much consideration. It is a false system that provides only for the temporary confinement of the wrongdoer. It is unjust to the man and bad economy for the state. The effort should be to turn the man out better fitted for citizenship than when he went in. This will save the state money in the long run."

Governor Hooper appears to be going about the business of improving prison conditions in a spirit of intelligence and firmness, as well as of humanity.

It would be well if the chief executives of all our states should follow the example of these men so far as to make a personal study of the system of criminal justice, with a view of introducing methods that will offer an incentive to good conduct and genuine endeavor on the part of convicts, and will confer on them all benefits consistent with the fundamental purpose of penal institutions.

Substitutes for the Third Degree.

WHAT is believed to have been the first demonstration in a court of justice of the Munsterberg theory of criminal detection, by heart pulsations, took place not long since in a California court. The demonstration ended in the discharge of Arthur Smith, a metal worker, who had been arrested as a suspicious character.

The officials believed the man, who when arrested gave the name of James Smithers, to be an ex-convict, and, failing in their efforts to identify him through the regular channels, decided to apply the Munsterberg theory.

The theory and the proposed test were explained to the prisoner, who readily consented to be a party to the experiment. The stethoscope was adjusted and his normal pulse was tested and found to be 79 beats per minute.

Certain words were then spoken to the prisoner, who was asked to reply to each with a word suggested by the one asked. This was done for the purpose of testing the claim of Professor Munsterberg that words spoken to men under arrest, especially those pertaining to the crime with which they might be charged, would cause them embarrassment in answering and would produce accelerated action of the heart.

The word "San Quentin," where the prisoner was suspected of having served time, caused no acceleration of the heart, and demonstrated his innocence according to the theory.

When interrogated as to his assumed name of "James Smithers" his heart action increased to 91 beats per minute.

On being charged with not having told the truth in this particular, the prisoner gave his correct name and address.

How much more humane is this method of detecting falsehood, than the tortures of the third degree. Long live the stethoscope and stop watch.

Electric Cardiagraphs.

If an actual photograph of the heart action is desired, it may be obtained by the aid of a machine which Dr. E. A. Newton, a German scientist, is said to have invented. It portrays accurately the pulsations of the heart muscles and the action of the valves, and discloses all irregularities, however slight. Accelerated action of the heart, resulting from the emotion of fear arising from guilt, would be disclosed in a characteristic series of leaps and bounds which are quite diverse from the pulsations due to the influence of love or joy.

Laughing Gas.

A New York dentist advocates laughing gas as a substitute for the police third degree. He believes that this, the least dangerous of anesthetics, lays open what already is in the mind, unconscious of the search for its secrets. He believes that if a man who has committed a serious crime should be questioned about it during a certain stage of recovery from nitrous oxide, or laughing gas anesthesia, he would not only reply and truthfully, but a half minute later he would realize fully what he had said.

An interesting experiment upon a prize fighter of international reputation, who was one of his patients, was made by the physician administering the nitrous oxide. As the patient was recovering from the anesthetic, and had reached the point where he began to break away from complete unconsciousness, the physician began counting distinctly, "one, two, three," and then the patient took up the numbers, saying, "Four, five, six,—I'm all right and ready," acting upon the impression that he had been knocked down in the ring and must show that he nevertheless was qualified to meet the requirements of the situation. When he had recovered he said the experience was most vivid; that he had recognized the great importance of responding on time.

It is claimed that this property of nitrous oxide anesthesia can be used to extract the truth as to their supposably criminal acts from those charged with serious crimes, and that after a confession had been obtained from the perpetrator of a crime by such means, when he regains the fullness of his natural senses he will be impelled to give the whole details,—but only when guilty.

Aid for Convicts' Families.

SOME states allow their convicts, if good, a penny a day. Some states allow their convicts, if good, a plug of tobacco. Some states allow their convicts, if good, pay for overwork. All states allow the convict's innocent family to suffer.

Imprisonment of the bread winner generally leaves those dependent upon him destitute, and compels them either to endure bitter want, or to become a public charge.

Recently a prisoner detained in a county jail in Indiana on a charge of petty larceny was detected passing a bundle to his wife, who was a daily visitor. The jailer examined the package and found that it contained the prisoner's food allowance, which he was turning over to his wife to keep her from starving. When the incident became known the prisoner's release was secured, and work was obtained for him.

Starting on the theory that it is the dependents of those confined in prisons who do the real suffering, penologists and humanitarians in general have for some time been endeavoring to work out a correction of this situation.

Many gubernatorial messages have called legislative attention to the question.

During 1911, the legislation enacted discloses a spirit of greater liberality on the part of the states towards convicts and their families.

The prisoner received compensation for labor in six states,—Florida, Kansas, Michigan, Nevada, Rhode Island, and Wyoming. His dependent family was given assistance in five,—Colorado,

Maine, Massachusetts, Missouri, and New Jersey. In the latter state, prisoners' families dependent on charity are relieved by the commissioner of charities at the rate of 50 cents for every day the prisoner works, but this relief fund is limited to 5 per cent of the value of all goods produced.

Kansas City is making an interesting experiment in the problem of supporting the families of convicts. The judge of the juvenile court of Kansas City has power to give pensions, for the aid of such families, to wives or widows of convicts residing in his county. For one child under fourteen years of age $10 a month is granted, for each additional child $5 a month. The pensions are given only when, by their aid, the mother is enabled to remain at home with her children, instead of going out to work thus leaving the children uncared for, with the probability that they will rapidly become delinquent. It will be of public interest to watch the practical outworking of this law.

Unjudicial Resentment.

DISRESPECT shown to the court by a convicted criminal brought to the bar for sentence frequently has prevented intended leniency, and resulted in a greatly augmented sentence. The dignity of the court must be upheld, and contempt cannot be tolerated. On the other hand, there should be nothing savoring of anger, resentment, or vindictiveness in the conduct of the judge, when he exercises the great powers intrusted to him, and pronounces the sentence of the law.

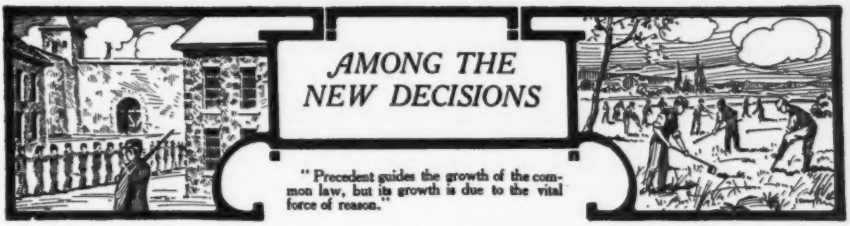
Recently a young man, after being placed on probation for petty larceny, turned to the bench and said, "Go to the devil." His probation was promptly revoked, and a three months' sentence in the penitentiary imposed. "You do not seem desirous of reform," remarked the court. Three months for four words! Yet in this case the lesson was needed and salutary.

A different scene occurred a short time ago in another court. A judge had occasion to sentence a young man to two years in the penitentiary for assault with intent to kill. The convict could not see any justice in the penalty imposed, and began to abuse the judge. Thereupon the latter increased the sentence to five years. With a recklessness born of despair, the prisoner exclaimed: "I don't care if you make it ten years." And the judge turned to the clerk of the court with the remark: "I sentence the prisoner to ten years in the penitentiary."

Is not such an employment of authority an evidence of personal resentment, regardless of the relation of the prisoner and society? Was not this man sentenced to two years in prison for assault with intent to kill, and to eight years for losing his temper?

Is not "justice" of this character sadly alloyed with human petulance and pettiness?

Ought not the liberal spirit of modern criminal methods to lead the court to ignore anger expressed in idle words, under trying circumstances? Justice may surely forgive some kicking against the goad.



Appropriation — contract to discount — public policy. Consenting to take less than the amount named in an appropriation bill, if the governor will approve it, is held in Lukens v. Nye, 156 Cal. 498, 105 Pac. 593, not to estop one in whose favor the appropriation is made from claiming the whole of it; since such agreement is against public policy.

This decision seems to be one of first impression. A similar question, however, has arisen in a number of cases in connection with an agreement by a public officer to accept less than the salary or fees provided for the office. These decisions are appended to the report of the Luken's Case in 36 L.R.A.(N.S.) 244.

Attorney — compensation for services — defending indigent prisoner — constitutional rights. Constitutional provisions entitling a person accused of crime to appear by counsel, and forbidding the taking of property for public use without compensation, or the taking of liberty or property without due process of law, are held in the Utah case of Pardee v. Salt Lake County, 118 Pac. 122, not to entitle a person designated by the court to defend an indigent prisoner, to recover compensation for his services from the public.

In the note accompanying this decision in 36 L.R.A.(N.S.) 377, it appears that the great weight of authority holds that an attorney assigned to defend an indigent person cannot recover compensation from the public, in the absence of statute.

Bankruptcy — estate held by entireties — right to reach. That the trustee in bankruptcy of a man cannot reach any portion of an estate held by him and his wife by entireties during the life of the wife, is held in Re Meyer, 232 Pa. 89, 81 Atl. 145, annotated in 36 L.R.A. (N.S.) 205.

Blasting — duty to notify neighbor — liability. One engaged in blasting on his own property is held in the Kentucky case of Hieber v. Central Kentucky Traction Co. 140 S. W. 54, not liable for injury to a blacksmith employed on neighboring property, by the plunging of a horse which he is attempting to shoe when frightened by a blast, of which the blacksmith had not been notified, although upon his request the former had been accustomed to notify him when a blast was to be exploded, so that he might protect himself.

As appears by the note accompanying this decision in 36 L.R.A.(N.S.) 54, the cases thus far adjudicated upon this point seem to agree in holding, generally, that there is liability for such injuries when the blasting is done negligently and no warning is given, and when there is no contributory negligence on the part of the one injured.

Carrier — duty to protect passenger from contagious disease. A novel question was presented in Bogard v. Illinois C. R. Co. 144 Ky. 649, 139 S. W. 855, holding that a carrier cannot be held liable for injury to a passenger from a contagious disease contracted on the train from another passenger, unless the conductor knew that the latter was afflicted with a contagious disease, and failed promptly to exercise ordinary care to prevent contagion to other passengers, such as the circumstances would admit of in view of its duty to the afflicted passenger and others on the train.

A reference to analogous cases may be found in the note appended to the report of this case in 36 L.R.A.(N.S.) 337.

Commerce — telegraph companies. Interstate commerce is held in Western U. Teleg. Co. v. Commercial Milling Co. 218 U. S. 406, 54 L. ed. 1088, 31 Sup. Ct. Rep. 59, to be not unconstitutionally regulated by a state statute under which, as construed by the state courts, a telegraph company cannot limit its liability for its negligent failure to deliver a telegram addressed to a person in another state.

The cases dealing with the subject of state law affecting telegraphs as a regulation of interstate commerce are presented in the note which accompanies this decision in 36 L.R.A.(N.S.) 220.

Corporation — election of officers — withdrawal of stockholders — breaking quorum. The withdrawal from a stockholders' meeting, which was organized when the necessary quorum of stock was present, of enough stock to break the quorum, is held in Com. ex rel. Sheip v. Vandegrift, 232 Pa. 53, 81 Atl. 153, annotated in 36 L.R.A.(N.S.) 45, not to deprive the remaining stockholders of the right to proceed with the business, nor defeat an election of officers by a majority of the stock present, when the meeting was organized under a by-law providing that the holders of a majority of the stock issued shall constitute a quorum, and that if no quorum is present at any meeting, a less number may meet and adjourn from time to time until a quorum is present.

Corporation — contract to perform medical services — liability for malpractice. A corporation organized for the purpose of constructing, owning, and operating a street railway, and which enters into an *ultra vires* contract to perform medical or surgical services, is held in Youngstown Park & F. S. R. Co. v. Kessler, 84 Ohio St. 74, 95 N. E. 509, not directly liable for damages for malpractice of medicine or surgery. The cases dealing with the duty and liability of one, other than a physician or surgeon, who contracts to provide medical or surgical attention to another, are gathered in the note appended to the foregoing decision in 36 L.R.A.(N.S.) 50.

County treasurer — public funds — bank failure — liability. A county treasurer is held in Mecklenburg County v. Beales, 111 Va. 691, 69 S. E. 1032, to be liable for public funds lost through bank failure, although he believes the bank to be sound, and it is generally so regarded, and in depositing the funds he merely follows a long-prevailing custom, and acts with knowledge of the supervisors, where the statutes of the state manifest an intention to guard with the utmost care the public funds from loss, and to hold the county treasurers handling them to a very strict accountability for their safekeeping.

The numerous cases which have dealt with the liability of public officers for loss of funds by failure of the bank in which they are deposited, are discussed in the note accompanying the preceding decision in 36 L.R.A.(N.S.) 285.

Covenant — to stop train — right of devisee. A covenant in a grant of a railway right of way, to stop trains at a point near the residence of the grantor, although referring to something not in being, and specifically stated to be for the benefit of assignees of the landowner is held in the Oregon case of Ford v. Oregon Electric R. Co. 117 Pac. 809, 36 L.R.A.(N.S.) 358, to run with the land into possession of his devisees.

Electrical work — inspection — police power. The power of a municipal corporation to regulate electricians and the installation of electrical work was upheld in the Texas case of Ex parte Cramer, 136 S. W. 61, annotated in 36 L.R.A.(N.S.) 78, which determines that police power extends to the inspection of all electrical work constructed or repaired within a municipality, and the placing of the cost thereof upon the person doing the work.

Eminent domain — planting houses — compensation. One who has purchased a house removed from property needed for the widening of a street, after it has been considered in awarding compensation to the owner of the property in the condemnation proceedings, is held in Re New York, 196 N. Y. 255, 89 N. E. 814,

not entitled to have its value again considered, by locating it within the line of the widened street upon property the title to which has not yet been acquired by the public.

The right to allowance for improvements made with knowledge that property will be required for public use is treated in the note appended to the foregoing decision in 36 L.R.A.(N.S.) 273.

Executors and administrators — voluntary advancement — right to recover. The devisee of an unfinished house who, upon refusal of the executor to make necessary expenditures to put cut lumber in place, and thereby protect the property, does so himself, is held in Re Hincheon, 159 Cal. 755, 116 Pac. 47, to act voluntarily, and he cannot recover the expenditure from the estate.

The few cases which have discussed the right of a devisee or heir to complete improvements at the expense of the state are gathered in the note accompanying the foregoing decision in 36 L.R.A.(N.S.) 303.

Fire — negligent starting — liability. One who sets out a fire on his own premises, without taking such precautions as a reasonable man should to prevent it from spreading to his neighbor's premises, is held in Hawkins v. Collins, 89 Neb. 140, 131 N. W. 187, to be negligent; and the fact that forty-eight hours intervened between the setting out of the fire and the time it spread to those premises does not in itself necessarily acquit him of negligence.

The recent cases dealing with this question accompany the report of the foregoing decision in 36 L.R.A.(N.S.) 194, the earlier authorities having been discussed in a note in 21 L.R.A. 255.

Fraudulent conveyances — assignment of chose in action — reservation of surplus. That an assignment, as security for a debt, of a cause of action for damages under an indemnity bond, does not, as a matter of law, hinder, delay, or defraud creditors because of a reservation in favor of the assignor of any surplus remaining after paying the debt, by an agreement between the parties, not disclosed in the assignment itself, and not filed, as was such assignment, with the clerk of the court in which the action was pending, is held in Merillat v. Hensey, 221 U. S. 333, 55 L. ed. 758, 31 Sup. Ct. Rep. 575, annotated in 36 L.R.A.(N.S.) 370.

Highways — additional burden on fee — power of supervisors to authorize. A county board of supervisors, having statutory power to grant franchises over and along the public roads and highways for all lawful purposes, is held in the California case of Gurnsey v. Northern California Power Co. 117 Pac. 906, not entitled where the public has only an easement in the highway, to authorize a power and electric company to construct a power line along the highway for commercial purposes, without compensation to the owner of the fee.

As appears by the note accompanying this decision in 36 L.R.A.(N.S.) 185, the tendency of the cases is to minimize the distinction based on the point whether the fee of the street or highway is in the public or the abutting owner, and to emphasize the distinction arising from the question whether the line is to be used for lighting streets or highways, or for furnishing light to private parties. As a rule the right of the abutting owner, whether it amounts to the ownership of the fee or is merely an easement of light, air, and access over a street or highway, the fee of which is in the public, is protected against the uncompensated use of the highway for an electric light line to supply private parties. But the construction of such a line for lighting the street or highway is not regarded as an additional burden for which the abutting owner is entitled to compensation; and this, in general, is true, whether he owns the fee or merely an easement.

Husband and wife — conveyance — duress — consideration. That resumption of cohabitation with a man who has compelled his wife to convey real estate to him by acts of cruelty, although evidence of ratification of the conveyance, does not validate it on the theory of condonation, is held in Hoag v. Hoag, 210 Mass. 94, 96 N. E. 49, 36 L.R.A.

(N.S.) 329, which is apparently the only case which has considered the effect of condonation by one spouse of cruelty by the other, upon the right of the former to cancel a conveyance of real estate procured through such cruelty.

Husband and wife — liability of community for tort. That a community is liable for personal injuries inflicted by the negligent driving, by the husband, of an automobile which is operated for hire for the benefit of the community, is held in the Washington case of Milne v. Kane, 116 Pac. 659, annotated in 36 L.R.A.(N.S.) 88.

The distinction made in Milne v. Kane, between the facts in that case and those in the earlier case of Brotton v. Langert, 1 Wash. 73, 23 Pac. 688, seems to establish the rule that, while the community is not liable for the separate tort of either spouse, it is liable for the tort of either which is committed in furtherance of a community enterprise.

Infant — orphan — right to contract. The mere fact that a minor has neither parent nor guardian is held in Wickham v. Torley, 136 Ga. 594, 71 S. E. 881, annotated in 36 L.R.A.(N.S.) 57, not to remove his disability and clothe him with the power to contract generally.

This seems to be a case of first impression. Undoubtedly, the dearth of authority is largely due to the fact that to allow the lack of parent or guardian to give additional contractual power to an infant would necessitate the overthrowing of the theory underlying the doctrine of infancy, which is that an infant lacks the judgment and discretion necessary to make ordinary contracts.

Intoxicating liquor — replenishing fires — liability. There is so much conflict among the courts as to what constitutes a violation of ordinances and statutes prohibiting the opening of saloons on certain days and at certain hours, that no general rule of law can be enunciated to which all the decisions would agree.

The South Dakota case of State v. Donovan, 132 N. W. 698, holds that a statute requiring saloons to be kept closed on Sunday is violated by entering such place to replenish fires and pump air into beer to prevent its spoiling.

The case law dealing with this subject is discussed in the note appended to this decision in 36 L.R.A.(N.S.) 167.

Judgment — suit by plaintiff — different capacities — effect. A judgment denying the existence of a street in a suit by a municipal corporation to establish its existence is held in the Wisconsin case of Rahr v. Wittmann, 132 N. W. 1107, 36 L.R.A.(N.S.) 392, to be no bar to a subsequent action by the mayor in his individual capacity to enforce his rights in the street because of a purchase of land with reference to a plat showing its existence.

Although the doctrine is well settled that parties to a judicial proceeding are not bound by a judgment rendered in such proceedings, except in the capacity in which they appear, this seems to be a case of first impression as to the application of that principle to the plea of a judgment in an action by or against one in the capacity of a public officer, as a bar to an action by or against him in his private capacity.

Master and servant — duty to protect contractor's servant. The owner of a mill is held in Kanz v. J. Neils Lumber Co. 114 Minn. 466, 131 N. W. 643, annotated in 36 L.R.A.(N.S.) 269, to owe the statutory duty to guard dangerous machinery, not only to his servants, but to a servant of an independent contractor, when such servant is employed in the mill about such dangerous machinery with the owner's knowledge, and where the independent contractor has no control over such machinery.

Mechanic's lien — right of architect. That an architect who furnishes plans and specifications for a building, and supervises its construction, is entitled to a lien thereon under the ordinary statutes giving a lien on buildings to persons who perform labor thereon, finds support in most of the decisions.

But the recent North Carolina case of Stephens v. Hicks, 156 N. C. 239, 72 S. E. 313, holds that an architect is not

entitled to a lien for services rendered in preparing plans and specifications for a building, under a statute giving a lien to laborers, mechanics, and materialmen.

The later decisions on this question are discussed in the note accompanying the foregoing case in 36 L.R.A.(N.S.) 354, the earlier adjudications having been considered in 16 L.R.A. 600.

Monopoly — exclusive contract between telephone companies. A contract between two local telephone companies for exclusive connection of their lines for long distance service is held in Home Telephone Co. v. Sarcoxie Light & Teleph. Co. 236 Mo. 114, 139 S. W. 108, annotated in 36 L.R.A.(N.S.) 124, to be not invalid on the theory that a public service corporation can grant no privilege to a corporation of the same character which shall not be open upon the same terms to all other similar corporations.

Municipal corporation — street railroads — protection of passengers. That it is within the power of the common council to require the operators of street cars to take reasonable measures to protect the passengers from dust raised by the cars, without regard to the benefits which may or may not result to the residents along the streets, is held in St. Paul v. St. Paul City R. Co. 114 Minn. 250, 130 N. W. 1108, annotated in 36 L.R.A.(N.S.) 235, where the cases concerning the power of a municipality to compel a street railway to sprinkle its tracks are collected and commented upon.

Municipal corporation — unauthorized expenditure — action by taxpayer. In the absence of a statute authorizing a taxpayer to maintain an action to restrain a municipality from making illegal appropriations, the weight of authority is in favor of his right to sue. The case of Pierce v. Hagans, 79 Ohio St. 9, 86 N. E. 519, holds that a resident taxpayer, owning property within an incorporated village, subject to be taxed for the support of the revenues of the village, in which village there is no solicitor nor other legal counsel whose duties require him, in the name of the corporation, to apply to a court to restrain the illegal use of the funds of the corporation, is not without legal capacity to maintain, for himself and on behalf of the village, an action against the municipal authorities to enjoin the unauthorized expenditure of the funds of the village.

This decision is accompanied in 36 L.R.A.(N.S.) 1, by a note in which the cases treating of the right of a taxpayer, in the absence of statute, to enjoin unlawful expenditure by a municipality, are collected and discussed.

Postoffice — money order — negotiability. That postoffice money orders are not negotiable instruments, subject to the privileges permitted by the law merchant to bona fide holders for value, is held in Bolognesi v. United States, — C. C. A. —, 189 Fed. 335, 36 L.R.A.(N.S.) 143.

Sale — statute of frauds — acceptance — offer to resell. An offer by a purchaser of a quantity of hay to be separated from a larger mass in a barn, to sell to another a quantity which had been separated from the common mass by the seller, and placed outside the barn, although it is rejected, is held in the Maine case of Beedy v. Brayman Wooden Ware Co. 79 Atl. 721, annotated in 36 L.R.A.(N.S.) 76, to be a sufficient acceptance of that particular lot to satisfy the statute of frauds.

School — residence of child — foster parent. That the residence for school purposes of a child whose father, upon the mother's death, having no home or means of securing one, gives the child up to his sister, who was to have full charge of it and give it a home, is with the sister, is held in the Kentucky case of Board of Trustees v. Powell, 140 S. W. 67, which is accompanied in 36 L.R.A. (N.S.) 341, by a note in which the recent cases dealing with the question of what constitutes residence entitling a child to school privileges are gathered, the earlier decisions having been presented in 26 L.R.A. 581.

Statute of frauds — description of land by name — sufficiency. A description of

a farm as my "Muddy creek farm," containing a certain number of acres, is held in Bates v. Harris, 144 Ky. 369, 138 S. W. 276, sufficient when contained in a written agreement to sell the same, to satisfy the statute of frauds, if it is shown by parol that the vendor owned but one farm on that creek containing the specified number of acres.

The cases treating of the sufficiency of a description of property by local appellation to satisfy the statute of frauds are collected in the note which accompanies this decision in 36 L.R.A.(N.S.) 154.

Tax — deposit of insurance company. Securities required by statute to be deposited by domestic life insurance companies with the state treasurer for the benefit of policy holders are held in Commonwealth L. Ins. Co. v. Louisville, 145 Ky. 284, 140 S. W. 306, to belong to and to be taxable to them; and it is immaterial that the income on the securities deposited is not sufficient to satisfy the taxes assessed against them.

As appears by the note appended to this decision in 36 L.R.A.(N.S.) 226, the authorities are agreed that where a foreign insurance company is required by law to deposit securities with a state officer as a prerequisite to doing business within the state, such securities, unless otherwise exempt, are proper subjects of taxation.

Tax — special assessment — failure to object — estoppel. A property owner whose property is so situated that it cannot be benefited by a public improvement is held in Power v. Helena, 43 Mont. 336, 116 Pac. 415, not entitled, where the facts do not appear on the face of the record, to ignore the proceedings to fix the boundaries of the assessment district, of which he has notice, and resort to a court of equity in the first instance to relieve him from an assessment for benefits against his property on account of such improvement, since, having misled the authorities into the belief that his property would share in the expense, he is estopped to contest his liability.

This decision is accompanied in 36 L.R.A.(N.S.) 39, by a note discussing the cases in which assessments for special benefits have been attacked upon the ground that the property is not benefited. The rule appears to be in conformity with the foregoing case, that the failure of a property owner duly notified of proposed improvement proceedings, to avail himself of the opportunity to remonstrate to the local authorities whose duty it is to pass upon the same, will preclude him in a subsequent proceeding from insisting that his property was wrongfully assessed for a portion of the cost, upon the ground that it received no benefits from the improvement.

Telephone — injury to patron by lightning — liability. A telephone company is held in Rocap v. Bell Teleph. Co. 230 Pa. 597, 79 Atl. 769, not liable for injury to a patron by lightning when he is attempting to use a phone during a thunderstorm, where it has equipped the line with the most effective device known for the prevention of such accidents, and the device is in good order at the time of injury. Nor is the company negligent in failing to place a warning upon instruments, that they are not to be used during thunderstorms, so as to render it liable for injury to a patron by lightning while making such attempt.

The liability of a telephone company for personal injury sustained by one using a telephone is discussed in the note appended to the preceding decision in 36 L.R.A.(N.S.) 279.

Tender — check — sufficiency. Tender by check of the amount of interest due on a mortgage, which is necessary to prevent the maturing of the entire debt, is held in Gunby v. Ingram, 57 Wash. 97, 106 Pac. 495, sufficient if no objection is made to the value of the check tendered, and the creditor has permitted prior payments upon the same instrument to be made by check without objection.

The cases treating of tender by check are gathered in the note appended to the report of the foregoing decision in 36 L.R.A.(N.S.) 232.

Recent English and Canadian Decisions

Bills and notes — stolen check — holder in due course. The drawer of a check payable to bearer, stolen before its delivery, is not rendered liable thereon to one who has cashed it, by the provisions of a statute relating to negotiable instruments that "if the bill is in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him, so as to make them liable to him, is conclusively presumed," such provision being inapplicable where the instrument has not by delivery come into existence as a check. McKenty v. Vanhorenback, 21 Manitoba L. Rep. 360.

Broker — right to pledge stock carried on margin. The fact that a broker pledges stock which he is carrying on margin for a customer as security for an amount in excess of that advanced on behalf of the customer is held in Clarke v. Baillie, 45 Can. S. C. 50, not to render him liable as for a conversion, where he did so in good faith, and on demand of his client delivered the number of shares ordered.

Contract — statute of frauds — oral agreement by bank to pay check of customer. One who sold goods to a person largely indebted to a bank received therefor a check upon the bank, and was told upon presenting it that there were no funds and that the check could not then be marked. The manager of the bank orally promised that after the account was reduced by the proceeds of sales then under negotiation, he would mark the check. These sales consisted in part of the goods for which the check was given. In reliance upon, and as a result of, these assurances, the payee forbore taking any proceedings to collect the amount of the check, and was thereby induced to accept it in payment for his goods. The sale having been carried out and the proceeds paid into the bank, the seller sought to enforce this promise. It was held that the bank's agreement was not a promise to answer for the debt or default of another within the provision of the statute of frauds; but that the forbearance of the seller to exercise his legal rights, and the direct interest of and benefit to the bank in the property passing to their customer, furnished a new and distinct consideration for the bank's undertaking. Adams v. Craig, 24 Ont. L. Rep. 490.

Criminal law — accessory after the fact — "receive, harbor, and maintain." Evidence that a woman, after the arrest of a man on the charge of counterfeiting, removed from a workshop occupied by him certain articles adducible in evidence against him, and who is found by the jury to have done so knowing him to be guilty, and for the purpose of assisting him to escape conviction, is sufficient to sustain a conviction under an indictment charging that she did "feloniously receive, harbor, and maintain" the principal felon. Rex v. Levy [1912] 1 K. B. 158.

Criminal law — obstructing officer. A charge of wilfully obstructing a police officer in the execution of his duty is supported by evidence of incitement of a mob to rescue a prisoner, and of following the officer and his prisoner in a menacing attitude, although without actual physical interference. Rex v. McDonald, 16 B. C. 191, 18 Can. Crim. Cas. 251.

Criminal law — pleading — right to plead autrefois acquit after plea of not guilty. That a defendant, after having pleaded not guilty to an indictment, is not, so long as the plea of not guilty stands upon the record, entitled to plead *autrefois acquit* in addition thereto, is held in Rex v. Banks [1911] 2 K. B. 1095, in which the opinion is expressed that the defendant should have pleaded *autrefois acquit* at first, and then pleaded over to the felony.

Death — damages — insurance. In a statutory action by parents for pecuniary loss occasioned by the killing of their son, the court should take into account in determining the amount recoverable the sum received by them as heirs or legatees from insurance which the son

had upon his life. Bourchard v. Gauthier, Rap. Jud. Quebec, 20 B. R. 487.

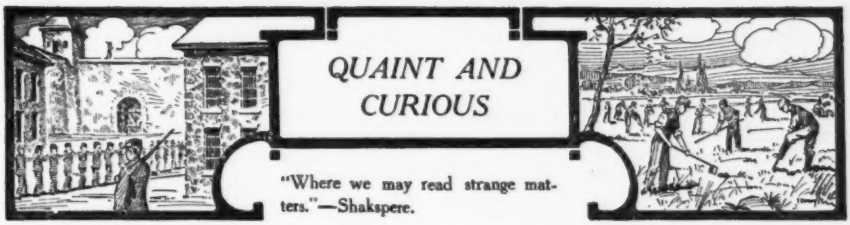
Deed — exception or reservation — construction. The reservation in a deed, made at a time when natural gas was not regarded as having commercial value, of "all mines and quarries of metals or minerals, and all springs of oil in or under the said land whether already discovered or not," is held in Farquharson v. Barnard Argue Roth Stearns Oil & Gas Co. 25 Ont. L. Rep. 93, not to include natural gas.

Estoppel — res judicata — confession of judgment for sum due under agreement as estopping defendant from alleging want of consideration therefor in subsequent suit. One who was sued for rent due under an agreement, and who consented to the entry of judgment for part of the sum claimed, is estopped in a subsequent action for rent under the same agreement from raising the defense of no consideration for the agreement, since the allegation of the existence of the agreement in the first action raised the issue of the existence of a valid, binding agreement. Cooke v. Rickman [1911] 2 K. B. 1125.

Literary property — right of author to rescind sale of manuscript upon purchaser's refusal to publish. A decision which will be of interest both to authors and publishers was rendered by the Supreme Court of Canada in Morang v. LeSueur, 45 Can. S. C. 95, in which it was held that where an author was commissioned to write a biography to be included in a certain series, there was a tacit agreement to publish the manuscript if accepted; and that, the manuscript having been rejected as unsuitable for the purpose for which it was intended, no property in it passed, and the author was entitled to rescind the contract, and have his manuscript returned to him upon tendering back the consideration which he had received.

Partnership — property of partner injured by negligence of firm's employee — right to damages. A point of partnership law which is characterized by the court deciding it as a novel one, and stated not to have arisen in any reported decision, was involved in Bigelow v. Powers, 25 Ont. L. Rep. 28, the facts of which are as follows: The plaintiff and twenty-six other farmers joined in the purchase of a threshing machine outfit with the intention of carrying on the business of threshing both their own grain and that of others. They adopted a firm name, and chose from among themselves an executive committee under whose direction the business was to be carried on, from time to time holding meetings at which directions were given in regard to the business. It was contemplated that the members of the firm would deal with it in providing for their own threshings; and accordingly it was part of the agreement that their threshings should be paid for at the same rates as those charged outside. It was not contemplated that, as between themselves, each of the partners should be endowed with full authority to act for and in behalf of the firm; but the principal authority was delegated to the board and the manager acting under and authorized by it. While plaintiff's grain was being threshed, sparks from the boiler set fire to his barn under circumstances which, had the plaintiff been an outside party, would have entitled him to recover damages. Upon this state of facts it was held that as the plaintiff's loss arose in the course of the business, and not in the course of any service that he was individually receiving because he was a member of the firm, he was entitled to recover from the firm and the individual members for his loss, less the amount of his contributory share.

Wills — ademption of legacy — change in form of stock. A testator holding at the date of his will 104 shares in a banking company made a specific bequest of "23 of the shares belonging to me in" the company. Between the will and his death the company, upon acquiring the business of another bank, changed its name and increased its capital, issuing in lieu of each former 80 share four 20 shares. Upon this state of fact it was held that as the 23 original shares, though changed in name and form, substantially existed in their subdivided form, there was no ademption, but that 92 of the new shares passed by the bequest. Re Clifford [1912] 1 Ch. 29.



De Profundis. John Carter—the name is a pen name—is a young Englishman who fell upon evil times after emigrating to this country, and ended by attempting to rob a safe. The crime seems to have been of the Jean Valjean variety, but he was caught and sentenced to a term of imprisonment in the Minnesota state prison. Here he wrote verses for the prison paper, which attracted the attention of certain magazine editors. He began to contribute to some of the leading magazines, and a few months ago, through the intervention of editorial friends, he was pardoned, after serving four years of his sentence.

His first published volume of verse has been passed upon by the reviewers.

The lines

They have spilt the wine, they have shattered the cup,
They have prisoned me.
The songs that I sang are scarce stored up In memory.
But hither, where naught but henbane grows,
God has sent me a wild, red rose,
And my heart is free.

—show what he can do at his best.

He is said to have written nothing so fine artistically as Wilde's "Ballad of Reading Gaol" or the best of Villon's ballades, but he has written much that reminds one of the work of both poets, that approaches it in quality, and always the intensity of his passion can be felt throbbing through the crudities of his verse. From his poems one glimpses the picture of the life of the prison and its outcast population, its meanings, its philosophy; and a grim picture it is.

The vigor with which he sketches this picture is the finest quality of his verse. At its best it imbues phrase and movement alike, as in the "Ballade of Misery and Iron," in which he is reminiscent of Villon in the swing of his verse and his massing of detail:

Haggard faces and trembling knees,
Eyes that shine with weakling's hate,
Lips that mutter their blasphemies,
Murderous hearts that darkly wait;
These are they who were men of late,
Fit to hold a plough or a sword.
If a prayer this wall may penetrate,
Have pity on these my comrades, Lord.

. . . . . .

These are pawns that the hand of Fate
Careless sweeps from the checkerboard.
Thou that know'st if the game be straight,
Have pity on these my comrades, Lord.

This again is reminiscent of Villon:

A brave pretense we make of merriment,
Cut-throats and thieves, a jolly murderous crew.

The nearest approach to the rhetorical is in some of his bitter atheistic flings. The octet of the sonnet on "Belief" may be quoted as the most finished expression of his unbelief:

There is a God above the tenement
Who knows its misery, but gives no sign;
A holy Spirit, puissant, divine,
Yet is the sword sheathed and the gold unspent
I, that would be with little gods content,
I, that have worshipped at a mortal shrine,
Under such weight of mystery am bent,
Nor may belief nor faith in Him be mine.

It was stated a few months ago that efforts were being made by a group of literary men to assist another prison poet whose work has attracted much favorable attention in magazines in which it has been appearing from time to time.

The man in question, who has been writing under the name of "J. H. Beckman," was sentenced for three years to the Ohio state prison in Columbus. He came to America from Norway a few years ago.

As often is the case with writers whose lives are lived in seclusion, voluntary or otherwise, Beckman's work shows a strong tendency to introspection,

and it is in poems along such lines that his best work is done.

A poem entitled "In Saecula Saeculorum" is a good example of this tendency. This is it:

I saw—against a purple, sunset sky—
The cross that held the Christ on Calvary,
And o'er the pale lips passed a human cry:
"Elei, elei, lamma sabachthani!"

I saw his precious blood, for sinners shed;
A royal vesture o'er his quivering form;
The nail-pierced hands; the thorn-encircled head,
And then the darkness of the coming storm.

I saw him die, the Son of God; His eyes
Raised to the heavens beyond the skies.
The head drooped low, and then great peace and blest
For him who had no place wherein to rest.

But lo! God's voice above the tumult break,
Resounding clear o'er tempest and o'er quake
I heard—and all the trembling world with me.
I saw God's hand across the storm-torn sky.
It pointed at the cross: "Thus did he die
To gain eternal life, O soul, for thee."

One of the prisoner's first efforts at poetry is called, "Where Willows Are Drooping." This is it:

Where the willows are drooping and softly swaying
I saw a skiff in the dawn of the day
On the murmuring brook with the sunlight playing
Drifting—like leaves of the autumn—away,
Drifting from childhood's wonderland—
A mother's love was the guiding hand.

Where the clouds hang low, and the storms are soaring,
I saw a boat, in the heart of the day,
On the foaming river, where whirling and roaring
It winds over reefs and ridges its way
Over the falls of Reality's land—
A sweetheart's love was the guiding hand.

Where the river meets with the surging billows
The tide of the traceless deep, deep bay,
For from the brook with its drooping willows,
I saw a raft in the dying day
Tossed on the brim of eternity's land—
God's infinite love was the guiding hand.

And I wondered how we can ever fail
Since love sits near us wherever we sail.

Prison bars cannot shut out inspiration, and genius often confers her gifts upon the wretched and despised of earth. Higher and better than any method of reformatory discipline is the operation of those eternal forces which reach the prisoner in his cell and work powerfully for his redemption. At their touch the better man awakes. He finds within himself undreamed of powers, and enters upon a new and spiritual quest.

Judging by Appearances. "Criminal nature!" As Thomas T. Tynan, the young warden of the Colorado state penitentiary, propelled his sturdy bulk into the automobile, his merry Irish face lost its usual smile, and, according to Success, he fairly snarled the words: "That's the kind of talk that makes me sick. I tell you, there isn't any! Come right down to it, and this thing they call 'criminal nature' is only human nature at its worst. Look at those men. Take 'em one at a time. Honest to goodness, I've been on many a camping trip with fellows that weren't half as fine and likeable and square. When theorists talk to me I tell them that the real 'criminal problem' is to get rid of these criminologists that fill the people with a lot of solemn dope about criminal ears, criminal mouth and that sort of stuff. It's all poppycock. Why, shave that shock head of yours, take off the collar and tie, put yourself in a ticking shirt and the average criminologist would weep with joy at the sight. Not long since a man came in who had all the beauty of a portrait by the Old Masters, but after the barber and tailor got through with him he looked the kind of a fellow we hate to meet on a dark night.

"Ever heard that story," he continued, "about the lawyer who took his wife to court? After she had looked around a minute, she gave a sudden shudder. 'My,' she whispered 'what an awful creature the prisoner is.'

"'Sh-h-h!' her husband hissed. 'The prisoner hasn't come in yet. That's the judge.'"

Presto, Change. With a quick movement of his handkerchief after he had sauntered toward the witness stand and came within reaching distance, a Scranton, Pennsylvania, attorney, wiped out the main point in the state's case against his client, who was on trial for commit-

ting an assault. The "evidence" was a dark spot on the prosecuting witness's jaw, supposed to have been caused by contact with the defendant's fist.

So quickly did the attorney rub the cloth against the witness's face that the latter was unable to dodge, and after the operation a sheepish grin had taken the place of the disfigurement. His jaw was as clean as if he had just shaved.

"There you are, gentlemen," shouted the attorney, waving the handkerchief triumphantly and pointing to the black daub in the center, "you see they're working a trick on you, and it isn't even a good one."

Long Distance Justice. "The telephone is put to judicial use occasionally out in our country," said W. S. Sherrill of Olympia, Washington.

"Not long ago I was seated in the office of a country magistrate when he was called up from a small town some 20 miles away by a constable, who said he had a prisoner who wanted to plead guilty to some minor offense, without being put to the trouble and loss of time of going to the judge's office.

" 'All right,' answered his Honor, 'Let your man step to the 'phone.—Is that you, Bill Jones?'

" 'Yes, judge.'

" 'Are you guilty of disturbing the peace?'

" 'I am, your Honor.'

" 'All right. You are fined $20 and costs, and can go free as soon as you pay the money to the officer.'

"This was satisfactory to all parties. Bill Jones paid over the cash and was let go, the whole transaction occupying not over three minutes."

Luxurious Tastes. A wealthy resident of Denver recently reported that he had frightened away from his home a burglar who took nothing, although jewels and silver were in plain sight, but who had merely gone to the library and enjoyed himself reading De Maupassant's works for an hour and smoking a number of the proprietor's monogrammed cigarettes.

Putting up the Bars. It is stated that Rev. Mabel R. Witham, pastor of the Church of Immortalism, of Boston, will hereafter decline to marry couples unless each produces two duly attested certificates. Both must have physician's signatures showing that they have passed medical inspection. In addition, the man must present a statement demonstrating his financial ability to maintain himself and wife in decent circumstances. The bride's second certificate must show that she is a master of the mysteries of household management, cooking, and domestic science.

Such measures would go far towards solving a great national problem. More inspection and circumspection; less sad retrospection and divorce.

Apaches' Lawyer. One Paris lawyer has had his name struck off the rolls because it was discovered that he acted as the regular legal adviser to the "apache" fraternity, from which he drew $6,600 annually in fees. One day he was engaged to defend an apache in a suburban court. His client was not satisfied with the lawyer's procedure in the case, and after a heated argument outside the court the client threw the lawyer into the River Marne.

Right. Dale City, California, achieved mention in the press despatches when it held the first trial by a woman jury that has taken place on the San Francisco peninsula.

A woman was on trial; a woman was the complaining witness and twelve women sat in judgment. They returned a verdict of "not guilty," for they held that if Mrs. Rodey had aimed the stone at the window, the window would not have been hit, and since the window was hit it was good enough proof that Mrs. Rodey never intended to hurl the stone at a glass.

So the twelve peers of Mrs. Rodey discharged the accused woman from custody.

There was one man in the affair,—Justice of the Peace Ellis C. Johnson, of Dale city. He did not have much to do.

Demanded His Bricks Back. There lived at one time, in the fashionable quarter of Dublin, an eminent lawyer who afterwards came to occupy a position on the judicial bench. He was a man of high professional attainments, but of testy and irritable temper. His next-door neighbor was a retired major, noted for the eccentricity of his habits. Between the two there was anything but a friendly feeling, and they did all in their power to annoy and harass each other. One night, memorable in Ireland as "the night of the great storm," the major's chimneys were blown down. Crash they went through the roof of the lawyer's house and thence down through floor after floor, carrying havoc in their course. The man of law was in no good humor as he contemplated the destruction, and what made matters worse was that it was the major's chimney that had occasioned the wreck. His mind was actively engaged in devising some process by which he could get satisfaction from his arch enemy, when this missive arrived from the major:

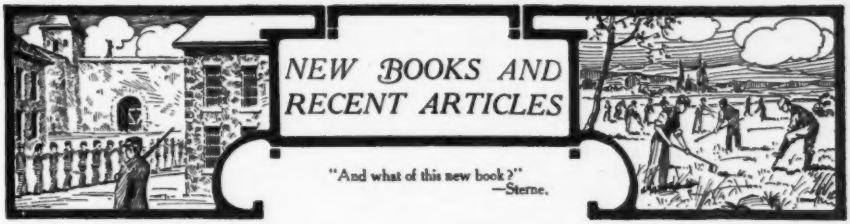
"Send me back my bricks immediately or I'll put the matter in the hands of an attorney."

Trial by Rice. They have peculiar methods of trying suspects in Bengal. One of these is called "trial by rice," says a writer in the Wide World Magazine. After a priest had been consulted as to an auspicious day, every person suspected and those who were usually near the place at night were ordered to be present at 10 o'clock that morning. On that date all turned up. First, the people were made to sit in a semicircle, and a "plate" (a square of plantain leaf) was set before each. Then a priest walked up and down chanting and scattering flowers. These said flowers, by the way, must be picked by a Brahmin, and they must be those which are facing the sun. This ceremony over, one of the clerks went to each man, and gave him about two ounces of dry raw rice, and told him to chew it to a pulp. Then commenced what looked like a chewing match. After about ten minutes had elapsed they were told to stop and eject it into the plantain leaf. All did so easily, with the exception of three men. In the case of these three the chewed rice had in two cases become slightly moistened, but not sufficiently so to allow of its being easily ejected, and they had much ado to get rid of it. The third man had chewed his into flour and it came out as such, perfectly dry. One of these three men promptly commenced to cry, and begged for mercy, confessing everything, and stating that man number three, who had acted as a kind of flour mill, was the chief instigator. It is a curious fact that fear, arising from an evil conscience, prevents saliva coming to the mouth, with the result described.

Simple but Effective. A detective was talking about jail breaking.

"Down in Colombo," he said, "they've got a very good dodge against the jail-breaker. It's simple, too. Just bricks.

"You see, the Mutival jail at Colombo is surrounded by a very high brick wall. Well, the last dozen courses of these bricks are laid loose, without mortar. So, when you try to escape, you climb stealthily, hardly daring to breathe, up the wall, and with a sigh of relief you reach the loose courses at the top, and —clatter, crash, bang, clatter, clatter— a thousand bricks in the profound silence fall with a noise fit to wake the dead, and a dozen warders rush out, and you climb down sadly into their waiting arms."



"Criminal Responsibility and Social Constraint." By Ray Madding McConnell, Ph. D. (Charles Scribner's Sons, New York.) $1.75 net.

In this work the learned author discusses, first, the aim of punishment, and presents the arguments in favor of and against the theories that the purpose of punishment is expiation, retribution, deterrence, or reformation. In none of these does he discover a wholly satisfactory purpose in punitive treatment. He sets up the general formula: Punishment is administered for the sake of its social utility. A more general statement of this view may be made thus: Punishment is given for social defense, for social protection, for social security, for the prevention of disturbance in the economic, political, and general social order, for the realization of the social ideal, for the promotion of the general well-being, for the attainment of the greatest happiness of the greatest number.

The consideration of the various problems connected with society's object in punishing leads up to the great problem of society's right to punish. On what ground does the justice of punishment rest? Many criminologists and philosophers maintain that the penal function is not purely social, but is moral as well. They set up the criterion of moral responsibility based on moral freedom. This leads the author of the volumn under consideration to undertake a searching analysis of the doctrines of freedom and responsibility in their relations to crime.

The conflicting views of the free-willist and determinist are elaborated in a series of interesting chapters. The latter, it appears, renounces trying to suit the punishment to the moral depravity. He administers it as a measure of social security. He justifies it on grounds of social utility, without reference to the ultimate moral nature of the individual, or to the culprit's metaphysical freedom and responsibility in acting as he did. He considers the criminal bad as the necessary result of the operation of natural laws,—heredity and training. He inflicts corrective discipline, not to atone for moral iniquity, but for its social usefulness and for its beneficial effect on the character of the sufferer. The principal aim is to influence future behavior. The past deed was a necessity and could not have been helped. But future action is as yet a possibility, and punishment is inflicted in order to add the weight of other inducements to prevent repetition of the damage. The determinist places his faith in the aim at prevention of crime. Recognizing that there are certain determinate causes of wrongful acts, he tries to find them out and to apply such treatment as to counteract and overcome them. He hopes that, through natural evolution and through man's discovery and scientific use of social forces, crime may be eliminated from society, and criminal tendencies eradicated from the nature of the man.

But if we admit that criminality is the inevitable result of necessary causes, and that the criminal is not "morally accountable" for his deeds, does this mean that all repressive measures are to be abandoned by society, that assassins and thieves are to be left at large, and that prisons are to be thrown open? The author answers: No. Repression of crime is as "necessary" as crime. The acceptance of the doctrine of the malefactor's irresponsibility means simply that the character of punishment is to be modified. Punishment is to be solely and exclusively a means of social protection and of amelioration.

Social accountability, then, is perfectly compatible with determinism. The foundation of this accountability is the personal activity of the agent. The essential and sufficient condition of accountability is that the act emanates from the person himself, a caused cause, yet nevertheless a cause.

The author maintains that the final justification of penal treatment, as such, is social utility. The right to punish is viewed as wholly a social right, which cannot be based on anything external to society, since for society, its own will is supreme. It punishes what is contrary to its will.

The conclusion drawn by the author, from the acceptance of determinism, is that the determining causes of crime should be sought and found and removed, or at least attenuated as much as possible. Combat alcoholism, remove the causes of poverty and misery, educate the children. Practice the thousand and one means of social hygiene and prophylaxis. There should be not only measures of prevention, but also measures of repression and cure. The public must be guaranteed against the attacks of criminals. Dangerous individuals must not be left at large to menace life and property. After society is protected, it is also to the common interest to look after the lot of the criminals themselves.

The discovery of the real causes of the culprit's action will indicate the treatment adapted to his specific needs. Scientific procedure,

then, will be adjusted to the peculiar character of the individual criminal.

Professor McConnell has given us a valuable, closely reasoned, and philosophic presentation of the important subject with which he has dealt.

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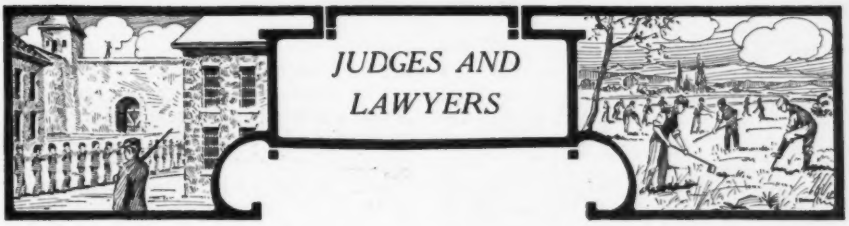
"Irrigation—The Continually Growing Importance of the Conservation and the Equitable Distribution and Use of Water in the Arid and Semi-Arid States and Territories."—74 Central Law Journal, 244.

The Unity of Society

The change that has come about is that we have—partly as a result of the new sciences of man,—partly as the result of experience in a world-wide social life of unexampled complexity—suddenly become conscious of the fact that we are "members of one another," that each is bound to all, that the suffering of one is the injury of all, and that each and every one of us is implicated—as an accessory before or after the fact—in the wrongs of every other.

This conception of the social order furnishes the key to the central problem which confronts those who are concerned with the position of the criminal in an ordered commonwealth, by disposing once and for all of the antithesis between society and the individual. We can no more think of society as arrayed against an external group of "enemies of society." The criminal is a part of society, just as the injured limb or the offending eye is a part of the body, and the end to be aimed at is not war, but peace; not destruction, but healing,—the healing of the body politic by such methods of cure or prevention as an enlightened statesmanship can devise.

The motive power that must direct the energies of the criminologist, the penologist, the criminal law reformer, is, therefore, not humanitarianism, still less sentimentality, but a passion for the betterment of society as a whole, a passion controlled and directed by a realizing sense that society falls short of completeness and of soundness,—that is, of wholeness,—so long as one of these, her little ones, "shrivels in a fruitless fire."
—Prof. George W. Kirchwey.



Hon. Roger Atkinson Pryor

Diplomat, Statesman, Soldier, Jurist

A SHORT time ago Governor Dix signed the Crawford bill to permit former Justice Roger A. Pryor, of New York, to be one of the retired supreme court justice referees in New York county.

The life story of Judge Pryor is an eventful one, beginning far back in the nineteenth century. He was born near Petersburg, Virginia, on July 19, 1828. He graduated at Hampden Sidney College in 1845, and from the University of Virginia in 1847.

HON. ROGER ATKINSON PRYOR

Public honors and responsibilities early came to him. When but twenty-five years old he was appointed special minister to Greece to procure the release of Rev. Jonas King from imprisonment on account of his religious faith.

Mr. Pryor was a member of the thirty-sixth Congress, the sessions of which immediately preceded the Civil War. He was re-elected in 1860, but did not take his seat, because of the secession of Virginia. He became a member of the Provisional and later of the Regular Congress of the Confederate states.

An interesting incident was related by Lieutenant General Stephen D. Lee, of the Confederacy, who was one of the aides sent to demand the surrender of Fort Sumter just prior to its bombardment. On Major Anderson's refusal to comply with the demand, says General Lee, "the order to fire the signal gun commencing the bombardment of the fort was given to Captain George S. James, commanding the battery at Ft. Johnson on James Island. It was then 4 A. M. on the morning of April 12, 1861. Captain James at once aroused his command and arranged to carry out the order. He was a great admirer of Roger A. Pryor, who was present, and said to him: 'You are the only man to whom I would give up the honor of firing the first gun of the war,' and he offered to allow him to fire it. Mr. Pryor, on receiving the offer, was very much agitated. With a husky voice he said: 'I could not fire the first gun of the war.' His manner was almost similar to that of Major Anderson, whom we had left but a few moments before on the wharf at Fort Sumter, after his refusal to surrender the fort."

Judge Pryor saw active military service, commanding a brigade in the Army

of northern Virginia, on some of the hard-fought battle fields of the War. In 1864 he was taken prisoner and confined in Fort Lafayette, from which he was released by the special interposition of President Lincoln.

In 1866 he removed to New York and was admitted to the bar. He served as judge of the court of common pleas, and afterwards as justice of the supreme court, from which he retired on reaching the constitutional age of seventy years.

Mrs. Pryor died on February 15th of this year. She was eighty-two years old. On November 8 last General and Mrs. Pryor celebrated the sixty-third anniversary of their marriage. Mrs. Pryor was Miss Sarah Agnes Rice. She was born on February 19, 1830, in Halifax County, Virginia. She was within a few days of nineteen when she was married at Charlottesville, Virginia, to Mr. Pryor, then a student in the University of Virginia.

Their wedded life is a charming story which leads back through a vista of beautiful recollections. We see the far away southern home before the War; we see the brave and manly man, the brave and gentle woman, going through the ordeals of the great conflict; we see their ideal home life renewed in the great city of the North after the struggle was over. We see the loyal wife and mother and grandmother becoming a writer at the age of seventy-four. "I am my own critic," she said once to a friend, "because the judge is so indulgent he admires all I do, and will not find fault with it." What can be more beautiful?

Judge Pryor is still engaged in the practice of his profession.

Death of Ex-Attorney General.

William H. McLellan, Attorney General of Maine in 1879, died on March 26th in Belfast, Maine, at the age of seventy-nine years. For many years he was president of the Waldo County Bar Association, and was prominent in several important murder trials. Previous to 1880 he served as a state senator.

Death of Judge Reeves.

Honorable Owen T. Reeves, nestor of the McLean county bar, died on March 2d, at Bloomington, Illinois.

The election of Judge Reeves to the bench occurred in March of 1877, from which time he remained as judge of the appellate and circuit courts for eighteen years. It was said of his administration by those competent to judge, that it was characterized by the utmost impartiality, the most profound knowledge of the law, and the highest wisdom in its application; and at the termination of a long period of faithful and sagacious service, the judge retired from the bench with a record surpassed by none.

April 1, 1874, he, with Judge R. M. Benjamin, founded the Wesleyan Law School, and its success has been largely due to their efforts. Judge Benjamin remained dean of the school until June, 1891, when he was succeeded by Judge Reeves, who served continuously since and in addition continued his practice of law for some years.

Decease of Kansas Justice.

Justice Charles B. Graves, of the supreme court of Kansas, died on March 25th at his home, in Emporia.

He was elected judge of the fifth judicial district in 1880, which position he held until 1896. After his retirement from the district judgeship, Judge Graves became a member of the law firm of Lambert, Graves, & Dickson, in Emporia, which afterward became Graves & Dickson, and which, upon the death of Judge Dickson became the firm of Graves & Hamer. He was appointed to the supreme bench of Kansas after the death of the late Justice E. W. Cunningham, in 1905, and was elected to that position in 1906, and again in 1908. Upon his retirement in 1911, he formed a law partnership with R. M. Hamer and W. C. Harris.

Rhode Island Justice Dies.

John Taggart Blodgett, associate justice of the Rhode Island supreme court for twelve years, died on March 4th at his home in Providence, after a protracted illness. He was fifty-three years old. With the exception of Chief Justice Dubois he was the oldest member of the court in point of service.

Hon. James Francis Burke.

Hon. James Francis Burke

THE subject of this sketch is a self-made man. He was born in Pennsylvania forty-four years ago, and is one of the most active members of the national House of Representatives, where he is serving his fourth continuous term. He has earned the reputation of "doing things" and never resting while there is anything to be done for his constituents. He is one of those men who represent all the people, regardless of party.

Mr. Burke has been engaged in the practice of the profession of the law at Pittsburgh since 1893. He is a speaker of rare eloquence and power, and is in constant demand both in and out of court. He has spoken on public questions in many of the states of the Union.

He was formerly secretary of the Republican National Committee, being at the time the youngest man who ever held that office. He was an officer of three Republican national conventions and a delegate to the convention of 1908. As a member of its committee on rules, he led the fight for a new basis of representations.

Noted Criminal Lawyer Dies.

Judge W. R. Parker, one of the leading criminal lawyers of Texas, died in Fort Worth on March 22d.

Judge Parker was a master of the Criminal Code, and in cases where his clients were convicted, was usually successful in obtaining reversals in the court of criminal appeals, where his knowledge of the law was held in high esteem. It is said that no criminal lawyer in the state has obtained so many reversals.

Hon. William Octave Hart.

Hon. W. O. Hart

ONE of the best-known lawyers in America is the Honorable William Octave Hart, of New Orleans. As a prominent member of the American Bar Association, the Commercial Law League of America, and other auxiliary law associations, Mr. Hart never fails to attend the annual meetings and to take an active part. The readers of CASE AND COMMENT will be interested in a sketch of the career of a man than whom none has been more active in promoting the best interests of the legal profession.

William Octave Hart was born August 19th, 1857, in New Orleans, Louisiana. He attended school at Lusher's Academy and the New Orleans Boys' High School. He is a member of the bar of Louisiana and of the Supreme Court of the United States, and has practised law in New Orleans for nearly thirty-four years. He was a member of the constitutional convention of 1890 and democratic presidential elector in 1900. He has been treasurer and member of the executive committee of the Commercial Law League of America since 1901, member executive committee American Bar Association 1908–10, chairman section of legal education American Bar Association 1909, member of committee on uniform state laws of the American Bar Association, fifteen years chairman of committee on uniform state laws of the Louisiana Bar Association, member advisory board American Institute Criminal Law, commissioner on uniform state laws in Louisiana since 1903; member American Society International Law, International Law Association, Maritime Law Association, and Medico-Legal Society.

These memberships of Mr. Hart are by no means honorary, but call for activities that would cause many men to hesitate before assuming them; but Mr. Hart has discharged every duty in connection with these memberships at all the meetings of these various associations. He has also submitted able and helpful papers, which are preserved in the records of these societies.

Among Mr. Hart's enthusiasms is his devotion to the welfare of the surviving Confederate veterans. His father, Captain Toby Hart, of Company E, 8th Louisiana Battalion, Heavy Artillery, C. S. A., planted the first gun in the defense of Vicksburg. Mr. W. O. Hart was first lieutenant commander Camp Beauregard, No. 130, U. S. C. V. and commandant from 1907–1909. He was historian of the camp in 1908. He was chairman R. E. Lee celebration committee 1907, chairman Judah P. Benjamin centennial celebration 1911, chairman Henry Clay semicentennial celebration 1910. He was a member of the International Congress of Lawyers and Jurists in 1904 and acted as delegate from Louisiana to the National Divorce Congress in 1906.

In addition to these numerous offices, Mr. Hart has been a delegate to peace conventions, Presbyterian sunday-school conventions, and various other gatherings in which he has always taken a prominent part. Mr. Hart is also a member of the committee of the Louisiana Anti-saloon League and of other societies for the promotion of temperance and the subservance of social order. In 1907 he delivered a course of lectures to the students of the Law School of the Louisiana State University. Mr. Hart is also a member of the Civil Code Commission of Louisiana, the Louisiana Tax Commission, and the Torens Land Title Commission of Louisiana.

In the midst of all these activities, he seems to possess an almost miraculous tact of being able to handle them with ability, and still have plenty of time to attend to the active duties of his profession and his social and domestic duties. He ranks high in the profession as a trial lawyer, and his firm (Dinkinspiel, Hart, & Davey) is frequently employed in important cases in the Federal and state courts.

In one respect Mr. Hart is probably the most useful citizen in New Orleans. The city is a popular place for conventions of every character, and no important convention or event is ever held without Mr. Hart being prominent on the committee of arrangement and entertainment. On these occasions the executive ability and tact he displays is an invaluable service, and all of these duties are without fee or reward, or the hope thereof.

It is no wonder that Mr. Hart is held in high personal esteem by all who are fortunate enough to know him.

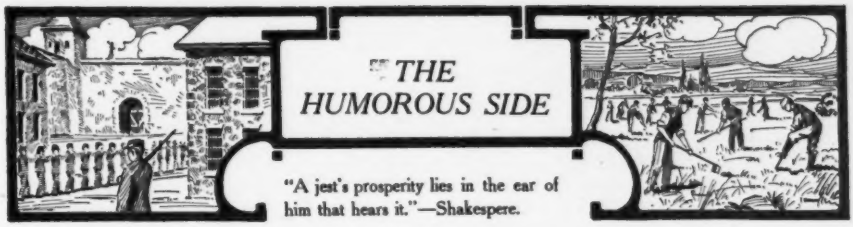
Death of Representative Foster.

Hon. David J. Foster, Representative in Congress from the First Vermont district, died recently of pneumonia in Washington. Mr. Foster, who had represented the First Vermont district continuously since the beginning of the Fifty-seventh Congress, was chairman of the House Committee on Foreign Affairs during the last year of the Sixty-first Congress. He was also chairman of the delegation from the United States to the General Assembly of the International Institute of Agriculture at Rome last year. In September, 1910, he headed the delegation which represented this country at the celebration of the centennial of Mexican independence.

Mr. Foster was born in Vermont, was graduated from Dartmouth College in 1880 and was a lawyer.

Leading Member of Texas Bar.

Judge James H. Robertson, a leading member of the Texas bar and attorney in Texas for H. Clay Pierce, died at his home in Austin, after an illness of several weeks. He was fifty-eight years old. He was a law partner of the late Governor Hogg. At the time of his death he was a member of the Legislature, in which body he served several terms.



He Meant Well. Magistrate—What sort of a man was it that you saw commit the assault?

Witness—He was a small, insignificant creature, your Honor, just about your size.—Minneapolis Journal.

Goodmorning; Good-By. "What is your name," asked Judge Cross on Friday of a tall, black mustasched Italian arraigned on a charge of disorderly conduct.

"Goodmorning," replied the alien.

"Goodmorning," returned the judge, with a smile, "but I want to know your name," he continued.

"Goodmorning," again came the reply.

"Is that all the English you know?" the judge demanded, frowning.

"Goodmorning's my name," replied the man before him, "Jim Goodmorning."

"Good-by," said the judge. "Case dismissed."—Paducah Sun.

His Name Saved Him. A man brought before the court in Biddeford, Maine, on a charge of vagrancy, when asked by the judge to give his name, answered, "David Gohome." The judge contracted his brows. "Your last name again?" he asked. "Gohome," was the reply. "All right, go ahead," said the judge; "that's a new one on me."—Kansas City Star.

Right. Lawyer—Your Honor, I ask the dismissal of my client on the ground that the warrant fails to state that he hit Bill Jones with malicious intent.

Rural Judge—This court ain't a graduate of none of your technical schools. I don't care what he hit him with. The p'int is, did he hit him? Perceed.—Minneapolis Journal.

Charitable. The judge asked the colored individual who was up for the usual chicken-roost offense, if he wanted counsel to plead his case.

He said, "No-o-o."

"Well, what do you propose to do?"

"Well, Jedge,—so fah as A'm concerned you can let the mattah drop."

Rather Difficult. Judge—What is the charge against this prisoner?

Policeman—Holding a man up and knocking him down, your Honor.—Boston Transcript.

How He Gets His Living. A good story regarding one of Boston's judges comes by way of a fisherman lawyer. He was up in one of the camps far into the Maine woods and got into conversation with a native. The latter, in talking of Boston, asked the visitor if he knew there a lawyer named Pierce—"Ned" Pierce.

"I'm not sure of a lawyer by that name. But there is a judge of the superior bench."

"Wa'al," said the Maine man, "I b'leeve I have heard he got a livin' by judgin."—Boston Journal.

An Epigram From the Bench. "Dat wasn't a bad epigram of de judge's!" said Plodding Pete.

"What did he say?"

"Thoity days."

"Dat ain't no epigram, is it?"

"Sure it is. I asked a fellow what an epigram is, an' he says it's a short sentence dat sounds light, but gives you considerable to think about."—Washington Star.

Promised Too Much. Magistrate—If I let you off this time will you promise me to take the pledge?

Delighted Prisoner (excitedly)—Oi will, yer Honor, an' drink yer health!—London Tit-Bits.

Evidently. A New Jersey girl gets three months in the workhouse just be-

cause she kicked a policeman in the face. Policemen ought to be taller.—Cleveland Plain Dealer.

A Comprehensive Verdict. A Wheeling (West Virginia) lawyer says that he has heard many queer verdicts in his time, but that the quaintest of these was that brought in not long ago by a jury of mountaineers in a sparsely settled part of that state.

This was the first case for the majority of the jury, and they sat for hours arguing and disputing over it in the bare little room at the rear of the court room. At last they straggled back to their places, and the foreman, a lean, gaunt fellow, with a superlatively solemn expression, voiced the general opinion:

"The jury don't think that he done it, for we allow he wa'n't there, but we think he would have done it ef he'd had the chanst."—Harper's Magazine.

A Prosperous Future. She was a lady visitor to the prison, kindly, and well-meaning, and as she chattered with a burglar who had been sentenced to six months' imprisonment, she thought she detected signs of reform in him. "And now," she said, "have you any plans for the future, on the expiration of your sentence?" "Oh, yes, ma'am," he said hopefully. "I've got the plans of two banks and a postoffice."—The Argonaut.

What a Black Eye Is. A badgering lawyer was examining a doctor in an assault case. The solicitor represented the defense, and the doctor testified that he treated the prosecutor for a black eye.

"What do you mean by a 'black eye?' queried the legal gentleman.

"I mean," said the doctor, without a smile, "that the prosecutor had received a severe contusion over the lower portion of the frontal bone, producing extensive echymosis around the eye, together with considerable infiltration of the subjacent areolar tissue."

The medical witness was relieved from further cross-examination.—New York Sun.

Preliminary Arrangements. The "Knave" in the Oakland Tribune has published several anecdotes about the late Dennis Spencer, of Napa, who was noted as a lawmaker, orator, and lawyer. The following story is particularly good:

One day there entered his office in Napa a bright-looking, well-dressed Chinaman. He took a chair and proceeded straight to the point:

"You Mr. Spencer, the big lawyer?"

"Yes."

"How much you charge to defend a Chinaman?"

"For what crime?"

"Murder."

"Five hundred dollars."

The Chinaman said he would call again.

A few days later he returned to Spencer's office, gravely placed $500 in coin on the desk before the astonished attorney, and said:

"All lite. I kill 'im."

Spencer defended and acquitted him.

Trade Secret Worth Money. Magistrate—How did you manage to extract the man's watch from his pocket, when it was provided with a safety catch?

Prisoner—Excuse me, sir, that is a professional secret. I am willing to teach you, however, for $10.—New York Mail.

Conclusive Proof. A certain lawyer has a tongue that frequently travels faster than his brain when he makes a speech. In a recent case, in which he was defending a man charged with theft, he brought down the court, jury, and spectators by saying excitedly: "Gentlemen of the jury, you have heard me demonstrate the utter innocence of my client. You have also heard the testimony of the prisoner's own boy in corroboration of what I have stated, and now, gentlemen of the jury, let me remind you of that old Scriptural saying that 'fools and children speak the truth.' What more convincing proof do you require?"—London Law Notes.